

IN THE MATTER OF
FEDERATED DEPARTMENT STORES, INC.

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

Docket 6836. Complaint, July 9, 1957—Decision, Jan. 8, 1959

Order requiring a department store in Cincinnati, Ohio, to cease violating the Fur Products Labeling Act by failing to comply with the labeling and invoicing requirements; by newspaper advertising which failed to disclose the names of animals producing certain furs, the country of origin of imported furs, or that some products contained artificially colored or cheap or waste fur, and which represented prices as reduced from regular prices which were in fact fictitious, misrepresented comparative prices and percentage savings claims, and fur products as being from a liquidating business; and by failing to keep adequate records as a basis for said pricing claims.

Mr. Morton Nesmith and Mr. John J. Mathias supporting the complaint.

Mr. Otis B. Gary of Carrington, Gowan, Johnson, Bromberg & Leeds, of Dallas, Tex. and Mr. Norman Diamond of Arnold, Fortas & Porter, of Washington, D.C., for respondent.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

PRELIMINARY STATEMENT

The complaint in this proceeding charges Federated Department Stores, Inc., hereinafter referred to as respondent, with violation of the Federal Trade Commission Act, the Fur Products Labeling Act, and the Rules and Regulations promulgated thereunder, in connection with the advertising and sale of furs. Specifically, respondent is charged with misbranding, false advertising, and false invoicing of furs.

After service of the complaint, respondent filed an answer denying all of the charges complained about. At the initial hearing held on June 6, 1958, a stipulation agreed to by respective counsel was received into the record. By the terms of the stipulation, it was agreed that counsel supporting the complaint had substantial evidence, both testimonial and documentary which, if offered in evidence, would sustain the allegations set forth in the complaint, which evidence respondent does not contradict, except that (1) Counsel supporting the complaint does not have

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sufficient evidence to establish the allegation in subsection (f) of paragraph 8 of the complaint with respect to comparative prices and percentage savings claims, and (2) Counsel supporting the complaint does not have evidence to show that respondent has ever sold a fur product which contained or was composed of used fur.

Said stipulation further provides that:

(a) Counsel supporting the complaint agrees that all evidence concerning the charges set out in paragraph 6 with respect to invoicing relate to transactions at the retail level.

(b) Subject to respondent's right to brief, and to request oral argument on questions of law, the hearing examiner and the Commission may proceed to make findings of fact, draw conclusions therefrom and enter an appropriate order as though such evidence sustaining the allegations of the complaint was in the record, and

(c) The respondent otherwise waives any further procedural steps before the hearing examiner and the Commission.

Counsel supporting the complaint and for the respondent have filed proposed findings of fact, conclusions, and order, and briefs thereon. All findings of fact and conclusions of law proposed by respective counsel, not hereinafter specifically found or concluded are hereby rejected. Upon the basis of the entire record the hearing examiner makes the following findings of fact and conclusions, and issues the following order:

FINDINGS OF FACT

1. Respondent, Federated Department Stores, Inc., is a corporation duly established under the laws of the State of Delaware with offices and principal place of business located at 707 Race Street, Cincinnati, Ohio.

2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, the respondent has been and is now engaged, at retail, 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 has sold, advertised, offered for sale, transported and distributed 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.

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3. Certain of said fur products were misbranded in that labels affixed thereto contained fictitious prices and misrepresented the value of such fur products in violation of Section 4(1) of the Fur Products Labeling Act.

4. Certain of said fur products were misbranded 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.

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) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was intermingled with nonrequired information in violation of Rule 29(a) of the said Rules and Regulations;

(b) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not completely set forth on one side of the labels as required by Rule 29(a) of the said Rules and Regulations;

(c) Required item numbers or marks were not set forth on labels in violation of Rule 40(a) of the said Rules and Regulations.

6. It is found that the evidence does not show that respondent has ever sold a fur product which contained or was composed of used fur.

7. In sales of certain of said fur products, respondent did not issue invoices, or sales slips, to its customer purchasers which contained the information specified by Section 5(b)(1) of the Act and the regulations prescribed thereunder. Respondent's sales of fur products are limited and confined to retail sales.

8. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act, in that respondent caused the dissemination in commerce, as "commerce" is defined in said Act, of certain advertisements concerning said products, by means of newspapers 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 under said Act, and which advertisements were intended to and did aid, promote, and assist, directly or indirectly, in the sale and offering for sale of said fur products.

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9. Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondent which appeared in various issues of the Dallas Morning News, a newspaper published in Dallas, Tex., and having wide circulation in said state and various other States of the United States.

By means of the aforesaid advertisements and through others of the same import and meaning not specifically referred to herein, respondent falsely and deceptively advertised its fur products in that said advertisements;

(a) Failed to disclose the name or names of the animal or animals that produced the fur contained in the fur product as set forth in the Fur Products Name Guide, in violation of Section 5(a) (1) of the Fur Products Labeling Act;

(b) Failed to disclose that fur products contained or were composed of bleached, dyed, or otherwise artificially colored fur, when such was the fact in violation of Section 5(a) (3) of the Fur Products Labeling Act.

(c) Failed to disclose that fur products were composed in whole or in substantial part of paws, tails, bellies, or waste fur when such was the fact in violation of Section 5(a) (4) of the Fur Products Labeling Act.

(d) Failed to disclose the name of the country of origin of imported furs contained in such fur products in violation of Section 5(a) (6) of the Fur Products Labeling Act.

(e) Represented prices of fur products as having been reduced from regular or usual prices where the so-called regular or usual prices were in fact 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 in violation of Section 5(a) (5) of the Fur Products Labeling Act and Rule 44(a) of the aforesaid Rules and Regulations.

(f) Misrepresented fur products as being the stock of a business in a state of liquidation in violation of Rule 44(g) of the aforesaid Rules and Regulations.

10. Respondent, in making the pricing claims and representations referred to in subparagraph (e) of paragraph 9 hereof failed to maintain full and adequate records disclosing the facts upon which such claims and representations were purportedly based in violation of Rule 44(e) of the aforesaid Rules and Regulations.

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11. It is found that the allegations contained in subsection (f) of paragraph 8 of the complaint with respect to comparative prices and percentage savings claims have not been established.

CONCLUSIONS

12. The acts and practices found herein to have been committed by respondent 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.

13. There is no evidence that respondent has ever sold a fur product which contained or was composed of used fur and, consequently, there is no evidence that respondent failed to observe the specific requirement of subdivision (B) of Section 4(2) of the Fur Act. Respondent did not disclose on labels affixed to certain products information required by other subdivisions of Section 4(2), however, and it has, therefore, misbranded such fur products in violation of that section. Since failure to attach to a fur garment an adequate label as prescribed by Section 4(2) constitutes misbranding, respondent should be prohibited from failing to observe all of the affirmative requirements of that section.

ORDER

It is ordered, That respondent, Federated Department Stores, Inc., 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, or offering for sale in commerce, or the transportation or distribution in commerce of any fur product, 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 had 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. Misbranding fur products by:

1. Affixing labels thereto which contain fictitious prices or prices in excess of those at which such products are usually and customarily sold, and which misrepresent the value of such fur products:

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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;

(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 a fact;

(d) That the fur product is composed in whole or in substantial part of paws, bellies, tails, 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, 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;

3. Setting forth on labels attached to fur products required information under Section 4(2) of the Fur Products Labeling Act and the rules and regulations thereunder, mingled with non-required information.

4. Failing to set forth on labels attached to fur product:

(a) Information required under Section 4(2) of the Fur Products Labeling Act and the rules and regulations thereunder, on one side of the label;

(b) Item numbers or marks assigned to fur products under Rule 40(a) of the Rules and Regulations promulgated under the Fur Products Labeling Act.

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 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 invoices;

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(f) The name of the country of origin of any imported furs contained in the 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:

(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 bleached, dyed, or otherwise artificially colored fur, when such is a fact;

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

(d) The name of the country of origin of imported fur contained in fur products.

2. 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 products in the recent regular course of its business.

3. Represents fur products as being the stock of a business in a state of liquidation, when such is not a fact.

D. Making price claims and representations of the type referred to in subparagraph C2 above, unless there are maintained by respondent full and adequate records disclosing the facts upon which such claims or representations are based, as required by Rule 44(e) of the Rules and Regulations, and Section 8(d)(1) of the Fur Products Labeling Act.

OPINION OF THE COMMISSION

By ANDERSON, Commissioner:

The complaint in this matter charges respondent with misbranding, false invoicing and false advertising of fur products in violation of the Fur Products Labeling Act and the rules and regulations promulgated thereunder. The hearing examiner found in his initial decision that respondent had, in certain respects, misbranded and falsely advertised fur products sold by it. Both sides have appealed from this decision.

Respondent contends on appeal that the Fur Act does not invest the Commission with any authority whatsoever over pricing prac-

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tices or records concerning the same and that such authority cannot be asserted under the terms of the administrative rule-making provisions of the Act. Counsel in support of the complaint have appealed from the hearing examiner's holding that the invoicing requirements of the Act are not applicable to sales of fur products at retail and from his failure to require respondent to comply with all labeling requirements prescribed in Section 4(2) of the Act.

Turning first to respondent's contention that the Commission has no authority under the Fur Act to proscribe deceptive pricing practices in labeling or advertising of fur or fur products, it is our opinion that this point should be, and it hereby is, decided adversely to respondent. The issue presented under this appeal is essentially the same as that considered in *DeGorter v. Federal Trade Commission*, 244 F. 2d 270 (C.A. 9, 1957), and *Mandel Brothers, Inc. v. Federal Trade Commission*, 254 F. 2d 18 (C.A. 7, 1958). The courts in those cases upheld the Commission's position that Section 5(a) (5) of the Fur Act comprehends all forms of misrepresentation or deception in advertising, including those relating to prices and values, and that Rule 44 which pertains to misrepresentation of prices in advertising is a valid, substantive regulation with the full force and effect of the statute itself. We also hold that subsection (1) of Section 4 of the Act encompasses pricing misrepresentations in the labeling of fur products. As we stated in the *DeGorter* case, *supra*:

... under that subsection, a fur product is misbranded when falsely or deceptively labeled and also when the label contains any form of misrepresentation or deception with respect to it.

Counsel supporting the complaint appeal from the hearing examiner's holding that a retail sales slip is not an invoice under the Act and also question the limited scope of the order pertaining to misbranding under Section 4(2). Both points raised on appeal by counsel supporting the complaint were considered in the *Mandel* case, *supra*. The Commission held in that case with respect to the first point that a retail sales slip is an invoice as that term is defined in Section 2(f) of the Act and that the invoicing requirements of the Act and rules and regulations promulgated thereunder are applicable to retail transactions. With respect to the second point, the Commission held in the same case that a fur product is misbranded under Section 4(2) of the Act if the requirements of that section are not fully complied with and that

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where it is found that there has been a failure to disclose any of the information prescribed by Section 4(2), an appropriate order should require a disclosure of all information prescribed by that section. On review of the case, however, the Court of Appeals for the Seventh Circuit reversed the Commission on both issues. The case is now pending before the Supreme Court on a petition for a writ of certiorari.

In the matter now before us, the hearing examiner has found that respondent's sales of fur products are limited to retail sales and that, in some of these sales, it did not issue invoices, or sales slips, to its customer purchasers which contained the information specified by Section 5(b)(1) of the Act and the regulations promulgated thereunder. Relying on the court's decision in the *Mandel* case, the hearing examiner concluded that the invoicing requirements of the Act are not applicable to sales of fur products at retail and, consequently, that respondent's failure to issue invoices to purchasers of its fur products is not a violation of the Act.

The hearing examiner has also found that although certain fur products sold by respondent were misbranded in that they were not labeled as required under the provisions of Section 4(2)(1), the evidence did not show that respondent had ever sold a fur product which contained or was composed of used fur. He concluded from this finding that respondent had not violated subdivision (B) of Section 4(2) and he held on the basis of the court's decision in the *Mandel* case that he was not authorized to include in the order a prohibition with respect to used furs as specified in subdivision (B) of the aforementioned section.

The conclusions of the hearing examiner are in accord with the court's decision in the *Mandel* case and contrary to the views expressed by the Commission in that case. As previously stated, the foregoing issues are now before the Supreme Court and there has not been a final judicial determination thereof. Under these circumstances, the Commission feels compelled not to adopt a position inconsistent with that which it has taken on appeal. Consequently, the appeal of counsel supporting the complaint is granted and the initial decision will be modified to conform with this opinion.

FINAL ORDER

Respondent and counsel in support of the complaint having filed cross-appeals from the initial decision of the hearing ex-

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aminer, and the matter having been heard on briefs, no oral argument having been requested; and the Commission having rendered its decision denying the appeal of respondent and granting the appeal of counsel in support of the complaint and directing modification of the initial decision:

It is ordered, That paragraph 7 of the initial decision be modified to read as follows:

7. In sales of certain of said fur products, respondent did not issue invoices, or sales slips, to its customer purchasers which contained the information specified by Section 5(b)(1) of the Act and the regulations prescribed thereunder. Respondent's sales of fur products are limited and confined to retail sales.

It is further ordered, That paragraphs 12 and 13 of the initial decision be modified to read as follows:

12. The acts and practices found herein to have been committed by respondent 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.

13. There is no evidence that respondent has ever sold a fur product which contained or was composed of used fur and, consequently, there is no evidence that respondent failed to observe the specific requirement of subdivision (B) of Section 4(2) of the Fur Act. Respondent did not disclose on labels affixed to certain products information required by other subdivisions of Section 4(2), however, and it has, therefore, misbranded such fur products in violation of that section. Since failure to attach to a fur garment an adequate label as prescribed by Section 4(2) constitutes misbranding, respondent should be prohibited from failing to observe all of the affirmative requirements of that section.

It is further ordered, That the following order be, and it hereby is, substituted for the order contained in the initial decision:

It is ordered, That respondent, Federated Department Stores, Inc., 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, or offering for sale in commerce, or the transportation or distribution in commerce of any fur product, 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 had been shipped

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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. Misbranding fur products by:

1. Affixing labels thereto which contain fictitious prices or prices in excess of those at which such products are usually and customarily sold, and which misrepresent the value of such fur products:

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;

(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 a fact;

(d) That the fur product is composed in whole or in substantial part of paws, bellies, tails, 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, 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;

3. Setting forth on labels attached to fur products required information under Section 4(2) of the Fur Products Labeling Act and the rules and regulations thereunder, mingled with non-required information.

4. Failing to set forth on labels attached to fur product:

(a) Information required under Section 4(2) of the Fur Products Labeling Act and the rules and regulations thereunder, on one side of the label;

(b) Item numbers or marks assigned to fur products under Rule 40(a) of the Rules and Regulations promulgated under the Fur Products Labeling Act.

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

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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 and address of the person issuing such invoices;

(f) The name of the country of origin of any imported furs contained in the 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:

(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 bleached, dyed, or otherwise artificially colored fur, when such is a fact;

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

(d) The name of the country of origin of imported fur contained in fur products.

2. 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 products in the recent regular course of its business.

3. Represents fur products as being the stock of a business in a state of liquidation, when such is not a fact.

D. Making price claims and representations of the type referred to in subparagraph C2 above, unless there are maintained by respondent full and adequate records disclosing the facts upon which such claims or representations are based, as required by Rule 44(e) of the Rules and Regulations, and Section 8(d)(1) of the Fur Products Labeling Act.

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It is further ordered, That the hearing examiner's initial decision as modified hereby be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That respondent, Federated Department Stores, Inc., 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 contained herein.

Complaint

IN THE MATTER OF
RONSON CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT AND OF SECS. 2(a) AND 2(d)
OF THE CLAYTON ACT

Docket 7066. Complaint, Feb. 19, 1958—Decision, Jan. 8, 1959

Consent order requiring a major producer of cigar and cigarette lighters and electric shavers to cease entering into price-fixing agreements with its retail customers in States having Fair Trade laws, which were illegal in that it was in competition with some of such customers in its own retail operations; to cease discriminating in price among its customers through paying allowances for cooperative advertising to some of them but not to all, and granting such allowances on unequal terms; and requiring said producer and its 11 named "Service Subsidiaries" to cease discriminating in price by selling to some customers at higher net prices than to others.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent, named in the caption hereof and more particularly designated and described hereinafter, have violated and are now violating the provisions of Section 5 of the Federal Trade Commission Act (U.S.C. Title 15, Sec. 45); and that respondent Ronson Corporation has violated and is now violating the provisions of subsections (a) and (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C. Title 15, Sec. 13), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges with respect thereto as follows:

Count I

PARAGRAPH 1. Respondent Ronson Corporation, sometimes hereinafter referred to as respondent Ronson, is a corporation organized and existing under and by virtue of the laws of the State of New Jersey with its principal office and place of business located at 31 Fulton Street, Newark 2, N.J.

PAR. 2. Respondent Ronson Service of California 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 233 Post Street, San Francisco 8, Calif.