

as modified hereby be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That respondents, Harry Graff & Son, Inc., Harry Graff and Abraham Graff, 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 herein.

IN THE MATTER OF
IRVING C. KATZ CO., INC., ET AL.

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

Docket 7190. Complaint, July 17, 1958—Decision, July 31, 1959

Order requiring a furrier in New York City to cease violating the Fur Products Labeling Act by failing to comply with invoicing requirements, by setting out on invoices fictitious prices, by failing to maintain adequate records as a basis for such pricing claims, and by furnishing a false guaranty that their fur products were not misbranded, falsely invoiced, and falsely advertised.

Mr. Charles W. O'Connell for the Commission.

Mr. Manfred H. Benedek, of New York, N.Y., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges that respondents have engaged in practices which are in violation of the Fur Products Labeling Act (hereinafter referred to as the Fur Act) and the Rules and Regulations promulgated thereunder (hereinafter referred to as the Rules), which practices constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act. Respondents, by answer, deny that they have violated either Act. Hearings have been held, at which evidence was presented in support of and in opposition to the allegations of the complaint, and counsel have filed proposed findings of fact and proposed conclusions. Upon the basis of the entire record, the following findings of fact are made, conclusions drawn and order issued.

1. Respondent Irving C. Katz 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 place of business located at 150 West 30th Street, New York, New York. Respondents Irving C. Katz and Morris Katz are president-treasurer and vice president, respectively, of said corporation. They formulate, direct and control the acts, policies and practices of said corporate respondent. Their address is the same as that of the corporate respondent.

2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have been, and are now, engaged in the introduction into commerce and in the manufacture for 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 manufactured for sale, 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-product" are defined in the Fur Products Labeling Act.

3. There are five charges in the complaint, which will be discussed under separate headings—Mislabeling, False Invoicing, False Advertising, Inadequate Records, and False Guaranty.

Mislabeling:

4. The first charge is that certain fur products were mislabeled contrary to the provisions of §4(2) of the Fur Act. To substantiate this charge, three handwritten "copies" of labels were presented, which contained information taken from labels which were found by a member of the Commission's staff on fur garments manufactured by respondents, when he saw those garments in the retail establishment of Arnold Constable, one of respondents' customers. These "copies" of labels do not disclose the name and address of the respondents or their registered number, as required by the Fur Act, they being the manufacturers. The "copies" do not show the size of the actual labels found on the fur garments nor reproduce their physical format, nor is it definitely established that they contain all the information that appeared on the labels. As to each "copy," the investigator-witness was asked whether or not there was a strip or stub attached to the lower end of the label on which a manufacturer's registered number appeared or which afforded space for such a number. The witness said he saw no such strip or stub, and did not see anything that led him to believe that any part of the original label had been removed.

5. The fur garments upon which the "copied" labels were found had been delivered to the retail establishment where they were seen by the Commission's investigator some time prior to his seeing them there. No showing was made that the labels he saw were the same

labels that were on the garments when they left respondents' manufacturing plant. Respondents testified that the label on every garment, when it left their shop, showed the manufacturer's registered number. At the time of the transactions involved in this proceeding, the respondents were using a standard printed-form tag-label with lines for use in filling in the fur name and origin. Below this were four other lines, at the left ends of which, in sequence, were the printed words: "Style," "Size," "Item No." and "R.N.". The latter designation was opposite the last line and at the lower part of the label on what appears to be a stub which, without too much effort, might be removed or cut off. The designation on the next-to-the-last line and immediately above the stub section of the label is "Item No.," and this is the last notation on all of the "copies" submitted in support of the allegations of the complaint.

6. It is obvious that the labels which the Commission's investigator saw and copied were not the full labels used by respondents. The stub portion on which the "R.N." identification would regularly be placed is missing. It is impossible to determine when or by whom that part of the label had been removed. The fur garments had been out of respondents' possession and control for some time. It was to their advantage to have all their garments carry their identification number, but while the garments were in transit or in the custody of the retailing establishment where they were found, there was ample opportunity for removal of the stub by others, either accidentally or intentionally. Under these circumstances it cannot be found that these garments had not been properly labeled by respondents. There is not sufficient substantial, reliable, probative evidence in this record to warrant a finding that the respondents have violated the Fur Act in respect to labeling, and the proceeding should be dismissed as to this charge for failure of proof.

False Invoicing:

7. The second charge is that certain of respondents' products were falsely invoiced in that respondents set out on invoices certain prices which were in fact fictitious, in violation of §5(b)(2) of the Fur Act. The Act defines "invoice" as follows:

SEC. 2. AS used in this Act—

* * * * *

(f) The term "invoice" means a written account, memorandum, list, or catalog, which is issued in connection with any commercial dealing in fur products or furs, and describes the particulars of any fur products or furs, transported or delivered to a purchaser, consignee, factor, bailee, correspondent, or agent, or any other person who is engaged in dealing commercially in fur products or furs.

Fur products are frequently sent by manufacturers to retail establishments on consignment, in which cases memorandums of consignment are issued. Respondents use printed consignment-memorandum forms upon each of which, in large, conspicuous letters, is the statement "THIS IS NOT AN INVOICE." However, this does not change the character of the document, which clearly, under the Act, is an invoice.

8. Respondents' consignment memorandums to Arnold Constable Company listed two sets of prices, one representing the price at which each garment could be purchased by Constable, the other a higher price, which was a comparative price arrived at, according to the statement of Respondent Irving Katz, on the basis of the "price that it (the garment) was made to have been sold for originally." This determination, he said, was based on cost of material, cost of processing and manufacturing, plus a reasonable profit. The record shows that in a few instances some of the garments may have been offered at some time at this higher price-level, but the conclusion is inescapable that such instances are very few. The two prices were put on the consignment memorandums at the instance of the consignee, Arnold Constable.

9. Typically the lower price is shown in a column headed "Now," preceding the higher price in a column headed "Was." Sometimes the headings do not appear, but the significance of the figures is the same. The following are typical examples of these pricing practices, garment descriptions being omitted:

<i>Now</i>	<i>Was</i>
\$1.550 -----	\$1.995
1.595 -----	2.295
1.795 -----	2.395
995 -----	1.495

and without headings:

415 -----	650
1.495 -----	2.100
2.295 -----	2.950
1.050 -----	1.350

10. Respondents maintained no records relative to prices of specific fur garments, except as shown on invoices, including consignment memorandums. As to many of the garments which carried the dual prices, there was no evidence of previous offering or actual selling prices. As to other garments, the record shows the following facts:

One garment identified as 148/2975 in a \$320-\$495 class mentioned in a Constable consignment of July 26, 1956, was, on December 4, 1956, consigned to L. Chester at \$295.

A garment which respondents said was similar to another garment identified as 180/43, a \$415-\$650 item in a Constable consignment of January 19, 1957, had been on October 4, 1956, consigned to Handelman at \$550.

Still another garment, 553/3469, a \$1,495-\$2,100 item in the Constable consignment of January 19, 1957, was consigned to K. Haas October 25, 1956, at \$1550, and to Royal Furs November 1, 1956, at \$1650.

One last garment, 538/2790, a \$1,750-\$2,750 item in the January 19, 1957, Constable consignment had been consigned to Samilson & Romer July 18, 1956, at \$2,150; to M. J. Schwartz November 26, 1956, at \$2150; to David Lienoff December 5, 1956, at \$1,995; and to Cohen-Metzger December 10, 1956, at \$1,995.

11. The pattern of pricing shows that respondents had no regular or usual price on their fur garments. The price listed under the heading "Was" does not, so far as the record shows, indicate an established former asking price. It is not based on any records which respondents kept as to cost of materials and manufacturing, nor are there any other records of respondents pertaining to price which show at what price any garment was originally offered or what or when changes in such prices were subsequently made. The conclusion is that such prices were fictitious, and that the respondents have violated the Fur Act by setting out fictitious prices on their invoices, as charged in the complaint.

False Advertising:

12. The third charge is that respondents have falsely and deceptively advertised certain fur products by setting out on invoices prices which were in fact fictitious, in violation of Section 5(a) (5) of the Fur Act, and reliance to establish this charge is upon the facts hereinabove set forth and discussed. That respondents used fictitious prices on their consignment memorandums issued in connection with their fur-products transactions with Arnold Constable is clearly established. The fictitious prices set forth in these documents were in excess of the offering prices of the fur products to which they related and constituted false representations that such products were being offered for sale at a reduction from such fictitious prices. The documents themselves were used by respondents to aid and assist in the sale or offering for sale of the fur products listed therein, and the false representations made therein with respect to the prices of such products were necessarily intended for the same purpose. The fur products so described in the aforementioned consignment memorandums were falsely advertised within the meaning of Section 5(a) (5) of the Fur Act.

Inadequate Records:

13. The fourth charge is that respondents have violated Rule 44(e) by not maintaining full and adequate records disclosing the facts upon which their pricing and savings claims and representations are based. As hereinabove found, respondents have falsely advertised certain fur products by representing that the prices thereof were reduced from what were, in fact, fictitious prices. Respondents have failed to maintain records disclosing the facts upon which such representations were based as required by subsection (e) of Rule 44 and, consequently, have violated that subsection.

False Guaranty:

14. The last charge is that respondents have furnished a false guaranty that certain of their furs or fur products were not misbranded, falsely invoiced and falsely advertised, when the respondents, in furnishing such guaranty, had reason to believe the furs or fur products so falsely guaranteed might be introduced, sold, transported or distributed in commerce, in violation of §10(b) of the Fur Products Labeling Act.

15. It has hereinabove been found that respondents have falsely invoiced and falsely advertised certain of their fur products which were consigned to a retailer who respondents had reason to believe would sell and further introduce such fur products in commerce. It follows that the continuing guaranty filed by respondents with the Federal Trade Commission, a copy of which is in the record, was false in that it guaranteed that "no fur or fur product in any such shipment or delivery will be falsely or deceptively invoiced or advertised within the meaning of the Fur Products Labeling Act and the Rules and Regulations thereunder."

CONCLUSIONS

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 Products Labeling Act.

2. The acts and practices of respondents hereinabove 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.

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.

4. The charge of alleged violation of Section 4(2) of the Fur Act is not sustained on the record, and provision for its dismissal accordingly is included in the order appearing hereafter.

Upon the basis of the foregoing findings and conclusions, and all the facts of record,

It is ordered, That respondents, Irving C. Katz & Co., Inc., a corporation, and its officers, and Irving C. Katz and Morris Katz, individually 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, or the manufacture for introduction into commerce, or the sale, advertising, or offering for sale, transportation or distribution in commerce, of fur products, or in connection with the manufacture for sale, 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. Falsely or deceptively invoicing fur products by representing, directly or by implication, on invoices that the former, regular or usual price of any fur product is any amount which is in excess of the price at which respondents have formerly, usually or customarily sold such product in the recent regular course of their business.

B. 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 represents, directly or by implication, that the former, regular or usual price of any fur product is any amount which is in excess of the price at which respondents have formerly, usually or customarily sold such product in the recent regular course of their business.

C. Making pricing claims or representations of the type referred to in Paragraph B above, unless there are maintained by respondents full and adequate records disclosing the facts upon which such claims and representations are based.

D. Furnishing a false guaranty that any fur or fur product is not misbranded, falsely invoiced, or falsely advertised, when the respondents have reason to believe that such fur or fur product may be introduced, sold, transported or distributed in commerce.

It is further ordered, That the charge of the complaint relating to alleged violations of Section 4(2) of the Fur Products Labeling Act be, and the same hereby is, dismissed.

OPINION OF THE COMMISSION

By SECREST, *Commissioner*:

This matter is before the Commission on the appeal of counsel supporting the complaint from the hearing examiner's dismissal of the allegations of the complaint that respondents had falsely advertised fur products in violation of the Fur Products Labeling Act and that they had failed to maintain records required by Rule 44(e) of the Rules and Regulations promulgated under the Act.

The issues presented herein were also before us in *Leviant Brothers, Inc.*, Docket No. 7194, and were decided in that case. Since we find no significant difference between the facts of the two cases insofar as these issues are concerned, our opinion in *Leviant* on these issues is equally applicable here. For the reasons stated in that opinion, we agree with counsel supporting the complaint that the hearing examiner erred in dismissing the aforementioned charges.

The appeal of counsel supporting the complaint is granted and the initial decision will be modified to conform with this opinion.

FINAL ORDER

Counsel in support of the complaint having filed an appeal from the initial decision of the hearing examiner, and the matter having been heard on briefs, no oral argument having been requested; and the Commission having rendered its decision granting the appeal and directing modification of the initial decision:

It is ordered, That paragraph 12 of the initial decision be modified to read as follows:

12. The third charge is that respondents have falsely and deceptively advertised certain fur products by setting out on invoices prices which were in fact fictitious, in violation of Section 5(a)(5) of the Fur Act, and reliance to establish this charge is upon the facts hereinabove set forth and discussed. That respondents used fictitious prices on their consignment memorandums issued in connection with their fur-products transactions with Arnold Constable is clearly established. The fictitious prices set forth in these documents were in excess of the offering prices of the fur products to which they related and constituted false representations that such products were being offered for sale at a reduction from such fictitious prices. The documents themselves were used by respondents to aid and assist in the sale or offering for sale of the fur products listed therein, and the false representations made therein with respect to the prices of such products were necessarily intended

for the same purpose. The fur products so described in the aforementioned consignment memorandums were falsely advertised within the meaning of Section 5(a)(5) of the Fur Act.

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

13. The fourth charge is that respondents have violated Rule 44(e) by not maintaining full and adequate records disclosing the facts upon which their pricing and savings claims and representations are based. As hereinabove found, respondents have falsely advertised certain fur products by representing that the prices thereof were reduced from what were, in fact, fictitious prices. Respondents have failed to maintain records disclosing the facts upon which such representations were based as required by subsection (e) of Rule 44 and, consequently, have violated that subsection.

It is further ordered, That paragraph 15 of the initial decision be modified to read as follows:

15. It has hereinabove been found that respondents have falsely invoiced and falsely advertised certain of their fur products which were consigned to a retailer who respondents had reason to believe would sell and further introduce such fur products in commerce. It follows that the continuing guaranty filed by respondents with the Federal Trade Commission, a copy of which is in the record, was false in that it guaranteed that "no fur or fur product in any such shipment or delivery will be falsely or deceptively invoiced or advertised within the meaning of the Fur Products Labeling Act and the Rules and Regulations thereunder."

It is further ordered, That the conclusions of law contained in the initial decision be modified to read as follows:

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 Products Labeling Act.

2. The acts and practices of respondents hereinabove 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.

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.

4. The charge of alleged violation of Section 4(2) of the Fur Act is not sustained on the record, and provision for its dismissal accordingly is included in the order appearing hereafter.

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 respondents, Irving C. Katz & Co., Inc., a corporation, and its officers, and Irving C. Katz and Morris Katz, individually 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, or the manufacture for introduction into commerce, or the sale, advertising, or offering for sale, transportation or distribution in commerce, of fur products, or in connection with the manufacture for sale, 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. Falsely or deceptively invoicing fur products by representing, directly or by implication, on invoices that the former, regular or usual price of any fur product is any amount which is in excess of the price at which respondents have formerly, usually or customarily sold such product in the recent regular course of their business.

B. 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 represents, directly or by implication, that the former, regular or usual price of any fur product is any amount which is in excess of the price at which respondents have formerly, usually or customarily sold such product in the recent regular course of their business.

C. Making pricing claims or representations of the type referred to in Paragraph B above, unless there are maintained by respondents full and adequate records disclosing the facts upon which such claims and representations are based.

D. Furnishing a false guaranty that any fur or fur product is not misbranded, falsely invoiced, or falsely advertised, when the respondents have reason to believe that such fur or fur product may be introduced, sold, transported or distributed in commerce.

It is further ordered, That the charge of the complaint relating to alleged violations of Section 4(2) of the Fur Products Labeling Act be, and the same hereby is, dismissed.

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 respondents, Irving C. Katz Co., Inc., Irving C. Katz and Morris Katz, shall, within sixty (60) days