

Findings

IN THE MATTER OF

BROOKLYN FASHION CENTER, INC., ET AL.

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

Docket 7092. Complaint, Mar. 26, 1958—Decision, Nov. 20, 1959

Order requiring operators of a retail ladies' clothing store in Brooklyn, N.Y., to cease violating the Fur Products Labeling Act in the offer for sale of 12 fur pieces which were "leftovers" of a stock they had purchased ten years before, by failing to comply with labeling requirements; and by advertising which failed to disclose the true name of the animal producing a fur and named other animals, and failed to disclose the country of origin of imported furs and the fact that some furs were artificially colored, and used comparative prices and represented sale prices as reduced from regular prices without having any records as a basis for such pricing claims.

Mr. Thomas A. Ziebarth for the Commission.

Mr. Jacob S. Spiro, of New York, N.Y., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

PRELIMINARY STATEMENT

The complaint in this proceeding charges that Brooklyn Fashion Center, Inc., a corporation, and Sigmund Schwartz, an individual and officer of said corporation, hereinafter referred to as respondents, violated the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act in their operation of a ladies retail clothing store in Brooklyn, New York. Respondents denied the allegations of the complaint, jurisdiction of the Commission, and pleaded that respondents are not engaged in "commerce" as that term is defined in the Act. A hearing has been held during which evidence in support of and in opposition to the complaint was received. At the hearing, counsel for the parties entered into a stipulation as to some of the facts. Proposed findings of fact, conclusions, and order have been submitted by respective counsel. All findings of fact and conclusions of law not hereinafter specifically found or concluded are rejected. Upon the basis of the entire record herein, the hearing examiner makes the following findings of fact, conclusions of law drawn therefrom, and order:

FINDINGS OF FACT

1. The respondent Brooklyn Fashion Center, Inc., is a corporation organized and doing business under the laws of the State of New

York with its office and principal place of business located at 545 Fulton Street, Brooklyn, New York. The respondent Sigmund Schwartz, an individual, is president of the corporate respondent and controls, directs and formulates the acts, practices and policies of the corporate respondent. His address is the same as that of the corporate respondent.

2. The respondents are charged in the complaint with misbranding and false and deceptive advertising of fur products. With respect to the charge of misbranding, respondents contend that the fur products in question were purchased by respondents prior to the passage of the Fur Products Labeling Act and, therefore, the provisions of said Act have no application to respondents. Respondents further claim that the Act has no application to persons and corporations engaged in the sale of fur products at retail, but only applies to manufacturers and wholesalers. Respondents also deny that they are engaged in interstate commerce and that, therefore, the Act has no application as to them. Most of these contentions have been answered adversely to respondents—*Federal Trade Commission v. Mandel Brothers, Inc.*, decided by the Supreme Court of the United States on May 4, 1959. The evidence introduced at the hearing in support of the complaint shows that, on October 18, 1957, November 13, 15, and 29, 1957, an attorney-investigator for the Commission visited respondents' store and interviewed the individual respondent Sigmund Schwartz, president of the corporate respondent Brooklyn Fashion Center, Inc., and requested that Mr. Schwartz permit the investigator to inspect respondents' records concerning the prices of 9 pieces of fur products which respondents had advertised for sale in the Kings section of the Sunday issue of the New York News of February 10, 1957.¹ The respondents did not have any records showing the history or source of any of their fur products since they were "leftovers" of a stock of fur products which respondents had purchased 10 years before, and so informed the investigator. These 12 fur pieces were hanging on a rack in respondents' store. The investigator inspected the 12 pieces of fur products which remained in respondents' stock and made exact copies of the labels which were attached to four of said four products. These copies were marked for identification as Commission Exhibits Nos. 4, 5, 6 and 7, respectively, and received in evidence at the hearing. Evidently, the investigator was of the opinion that the labels on the other 8 pieces of fur products complied with the provisions of the Act, otherwise, copies of them would have been made and offered in evidence at the hearing.

¹ Respondents had remaining on hand in their stock a total of 12 pieces of fur products but only advertised 9 pieces for sale.

3. Commission Exhibit No. 4-a is a copy of a label attached to one of respondents' fur products. This label describes the fur as dyed "Marmot." Under the terms of the stipulation which was entered into between counsel for the parties, (Commission Exhibit No. 8-B), it was agreed, among other things, that "Marmot" is a fur which is obtained only from sources outside the United States. Therefore, it is found that, since the label identified as Commission Exhibit No. 4-a does not show the name of the country which produced the imported "Marmot" fur, respondents violated Section 4(2)(F) of the Act. *Benton Furs*, Docket No. 6501, August 23, 1957.

4. Commission Exhibit No. 7 is a copy of one of respondents' labels which describes the fur product as dyed "Persian." The Fur Products Name Guide does not list any animal under the name "Persian." Accordingly, it is found that this label does not show the name of the animal which produced the fur, in violation of Section 4(2)(A) of the Act.

5. The label on the fur product received in evidence as Commission Exhibit No. 5 identified the animal which produced the fur as "Coney," whereas, the animal which produced the fur was rabbit. It is found, therefore, that respondents violated the provisions of Section 4(3) of the Act even though the correct name of the animal which produced the fur was used on the lower portion of the label below the perforation. That portion of the label below the perforation is intended to be surrendered at the desk in respondents' store and does not remain attached to the fur product.

6. (a) Commission Exhibits Nos. 4, 5 and 7 demonstrate that said fur products were not labeled in accordance with the Rules and Regulations promulgated under the Act in that information required under Section 4(2) of the Act was mingled with non-required information on labels in violation of Rule 29(a) of the Rules and Regulations. On these particular labels, the names of colors that are not a part of the true name of the animal which produced the fur and the names of types of garments are non-required information and should not appear on the same side of the label used for disclosing required information. (b) Furthermore, Commission Exhibit Nos. 4, 5, 6 and 7 demonstrate that said fur products were not labeled in accordance with the Rules and Regulations under the Act in that information required under Section 4(2) was set forth in handwriting on the labels in violation of Rule 29(b) of the Rules and Regulations.

7. The respondents' advertising complained about will next be discussed. The advertisement which the complaint charges was a

violation of the Act was placed by respondents in the Kings section of the Sunday issue of the New York News on February 10, 1957. In this advertisement, respondents advertised 9 of their 12 pieces of fur products which then remained on hand at reduced prices. These 12 pieces were "leftovers" and had been in stock for 10 years prior to December, 1958. The individual respondent Schwartz testified that there had been no demand for fur products for the past 10 years and, in an effort to dispose of the remaining pieces, he placed the advertisement. Respondents had not purchased any fur products to replace their depleted stock during said 10 year period. The advertisement appeared only in the Kings County (Brooklyn) section of the News. The evidence shows that the circulation of the Kings section is restricted and intended for local distribution only. However, 175 copies of the Kings section were mailed to points outside the State of New York to men in the armed services who are residents of Brooklyn, to former residents of Brooklyn who had moved out of the State and wished to receive the Kings section, and the remainder to clipping services. Respondents contend that such a limited distribution is not sufficient as a matter of law to bring the respondents into interstate commerce. This question has been decided adversely to respondents by the Commission in previous cases—*De Gorter v. F.T.C.*, 224 F. 2d 270 (C.A. -9, 1957), and *Benton Furs, supra*. It is found and concluded that such a distribution in interstate commerce is sufficient to give the Commission jurisdiction.

8. Among the fur products included in said advertisement which are alleged to be in violation of the Act are the following:

(a) A "Persian Paw" fur coat and a "Natural Fox" coat are advertised. With respect to the "Persian Paw" coat, there is a failure to disclose the true name of the animal which produced the fur, namely, Lamb. With respect to the "Natural Fox" coat, the advertisement failed to disclose the member of the Fox family that produced the fur as required by the Fur Products Name Guide. Accordingly, it is found that respondents violated the provisions of Section 5(a)(1) of the Fur Products Labeling Act.

(b) A "Mouton Lamb" coat was included in said advertisement. Paragraph 12 of the stipulation entered into between Counsel (Commission Exhibit No. 8(b)) provides that the Mouton Lamb Coat referred to in the advertisement was composed of dyed mouton processed lamb. It is found, therefore, that respondents violated Section 5(a)(3) of the Act.

(c) A "Black Seal Dyed Coney" coat, a "Let Out Mink-Dyed Marmot" coat and a "Beaver-Dyed Raccoon" coat were also adver-

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tised. The stipulation (Commission Exhibit No. 8-B) provides that the "Black Seal Dyed Coney" coat referred to in the advertisement was made from the fur of rabbits. The term "Marmot" used in the advertisement was used to describe dyed Marmot. The term "Beaver-Dyed Raccoon" was used to describe the fur of a raccoon. Accordingly, it is found that said advertisement contained the names of animals other than the names of the animals which produced the fur in violation of Section 5(a) (5) of the Act.

(d) A "Persian Lamb" and a "Let Out Mink-Dyed Marmot" coat are also advertised. The name of the country of origin of the furs contained in said fur products are not disclosed. Paragraph 9 of the stipulation above referred to (Commission Exhibit No. 8(b)) provides that Persian Lamb and Marmot are furs which are and have been obtained only from sources outside the United States. It is found, therefore, that respondents violated Section 5(a) (6) of the Fur Products Labeling Act.

9. Paragraph 8 of the complaint alleges that, in said advertisement, respondents used comparative prices and represented that said fur products were reduced from regular or usual prices. It is also alleged that respondents failed to maintain full and adequate records disclosing the facts upon which such representations were based in violation of Rule 44(e) of the Rules and Regulations. As examples of the comparative prices set forth in said advertisement, were the following: "Reg. \$149 MOUTON LAMB COAT \$40"; "Reg. \$199 NATURAL FOX COAT \$25"; Reg. 59.50 KIDSKIN JACKET \$15." A subpoena duces tecum was served upon the individual respondent Sigmund Schwartz directing him to produce at the hearing respondents' invoices, records, etc., concerning the origin and history of each of said fur products. Mr. Schwartz appeared at the hearing and testified that he did not have any records of said fur products; that they had been purchased by him 10 years prior to the hearing, before the passage of the Fur Products Labeling Act, were "left-overs," and, after their disposal, respondents did not intend to engage in the sale of fur products in the future. Even though respondents purchased said fur products prior to the passage of the Fur Products Labeling Act, said Act became effective on August 9, 1952, and, thereafter, it was the lawful duty of respondents to comply with its provisions. Mr. Schwartz further testified that respondents had not sold any fur products for 10 years prior to the hearing. This being so, actually there were no regular prices for the fur products advertised in Commission Exhibit No. 1. It follows, therefore, that the representations of so-called "regular" prices in said advertisement were false. Accordingly, it is found that the allegations contained in Paragraph Eight of the complaint have been established.

CONCLUSIONS OF LAW

1. The respondents are engaged in commerce as the term is used and employed in the Fur Products Labeling Act. The acts and practices of the respondents as herein alleged 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.

ORDER

It is ordered, That respondents, Brooklyn Fashion Center, Inc., a corporation, and its officers, and Sigmund Schwartz, as an individual and as an officer of said corporation, and respondents' agents, representatives 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 have been made in whole or in part of fur which has been shipped and received in commerce, "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. Failing to affix labels to fur products showing in words and figures plainly legible all of the information required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.

2. Setting forth on labels affixed to fur products the name or names of any animal or animals other than 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.

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 mingled with non-required information.

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

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:

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 the fact.

(c) The name of the country of origin of any imported furs contained in the fur product.

2. Contains the name or names of any animal or animals other than the name or names provided for in Section 5(a)(1) of the Fur Products Labeling Act and as prescribed under the Rules and Regulations.

C. Making price claims or representations in advertisements respecting comparative prices or reduced prices unless there are maintained by respondents adequate records disclosing the facts upon which such claims or representations are based.

OPINION OF THE COMMISSION

By TAIT, *Commissioner*:

This matter is before the Commission upon the appeal of counsel supporting the complaint from the hearing examiner's initial decision. The complaint charges respondents with misbranding and false advertising of fur products and the failure to maintain records in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder. The only issue raised by the appeal is whether that portion of the order in the initial decision which pertains to misbranding is too limited in scope.

The complaint alleges in Paragraphs Four and Five, respectively, that certain of respondents' fur products were misbranded in violation of Section 4(3) of the Fur Products Labeling Act and that certain fur products were misbranded in violation of said Act in that they were not labeled in accordance with the provisions of Rule 29(a) and (b) of the Rules and Regulations promulgated under the Act. Although the hearing examiner found that these allegations were sustained by the evidence, he failed to include in the order contained in his initial decision any provision with respect to the practices covered by such allegations.

The initial decision does not explain why the hearing examiner did not inhibit these particular practices, and we can only assume that his failure to do so was an oversight. His findings with respect to the aforementioned allegations are supported by the record and

the unlawful practices found to have been employed by respondents should have been prohibited.

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

FINAL ORDER

This matter having been heard by the Commission upon the appeal of counsel supporting the complaint from the hearing examiner's initial decision; and the Commission having rendered its decision granting the appeal and directing modification of the initial decision:

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

It is ordered, That respondents, Brooklyn Fashion Center, Inc., a corporation, and its officers, and Sigmund Schwartz, as an individual and as an officer of said corporation, and respondents' agents, representatives 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 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, do forthwith cease and desist from:

A. Misbranding fur products by:

1. Failing to affix labels to fur products showing in words and figures plainly legible all of the information required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.

2. Setting forth on labels affixed to fur products the name or names of any animal or animals other than 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.

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 mingled with non-required information.

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

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:

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 the fact.

(c) The name of the country of origin of any imported furs contained in the fur product.

2. Contains the name or names of any animal or animals other than the name or names provided for in Section 5(a)(1) of the Fur Products Labeling Act and as prescribed under the Rules and Regulations.

C. Making price claims or representations in advertisements respecting comparative prices or reduced prices unless there are maintained by respondents adequate records disclosing the facts upon which such claims or representations are based.

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

It is further ordered, That respondents, Brooklyn Fashion Center, Inc., and Sigmund Schwartz, 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 as modified.

IN THE MATTER OF

RELIANCE WOOL & QUILTING PRODUCTS, INC., ET AL.

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