

GETSOS & GERSHMAN, INC., ET AL.

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

Docket 7470. Complaint. Apr. 8, 1959—Decision. Jan. 23, 1960

Order requiring furriers in New York City to cease violating the Fur Products Labeling Act by fictitious pricing of fur products effected by setting out on consignment memoranda two prices, one a "regular cost" price and the other a lower price at which the garments were offered, and by failing to maintain records disclosing the facts upon which the two sets of prices were determined.

Mr. Frederick McManus for the Commission.

Bernstein & Bernstein, by *Mr. Jonas H. Bernstein*, of New York, N.Y., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges that respondents have violated the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder by falsely and deceptively invoicing and advertising certain fur products through the use of fictitious prices, and by failing to maintain full and accurate records disclosing the facts upon which their pricing claims and representations were based.

After hearings, proposed findings and conclusions were submitted by counsel. Upon the basis of the entire record, the following findings are made, conclusions drawn and order issued.

1. The respondent Getsos & Gershman, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York; the respondent Morris Gershman is vice-president of the corporate respondent and directs and controls its acts, policies and practices; and the address of both respondents is 345 Seventh Avenue, New York, New York.

2. Subsequent to the effective date of the Fur Products Labeling Act of August 9, 1952, the 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, and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as "commerce," "fur" and "fur products" are defined in the Fur Products Labeling Act.

3. Under §2(f) of the Fur Act, a consignment memorandum is by definition an invoice. On various consignment memoranda involving transactions between respondents and Arnold Constable, two prices were set out for certain garments—one a "regular cost" price, the other a lower price at which the garments were offered. For example, a consignment memorandum of January 5, 1957, contains the following:

		<i>Regular cost</i>	<i>Price</i>
1750/2	1 Tip-dyed Ranch Mink Stole for	\$295	\$200
3000/3	1 Natural Ranch Mink Clutch Cape for	\$250	\$200
3000/5	1 Natural Ranch Mink Clutch Cape for	\$250	\$200
3000/6	1 Natural Ranch Mink Clutch Cape for	\$250	\$200

A consignment memorandum of March 1, 1957, contains the following:

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		<i>Regular cost</i>	<i>Price</i>
1744/48	1 Natural Ranch Mink Stole for -----	\$250	\$185
1744/49	1 Natural Ranch Mink Stole for -----	\$250	\$185
1744/50	1 Natural Ranch Mink Stole for -----	\$250	\$185
1744/51	1 Natural Ranch Mink Stole for -----	\$250	\$185
1744/52	1 Natural Ranch Mink Stole for -----	\$250	\$185
1744/53	1 Natural Ranch Mink Stole for -----	\$250	\$185
1755/7	1 Returned Natural Ranch Mink Clutch Cape for-----	\$275	\$185

4. The record shows that—

(a) item 1750/2 had been consigned on November 23, 1956, to Oppenheim-Collins at \$195;

(b) items 3000/3, 3000/5 and 3000/6 had also been consigned on November 23, 1956, to Oppenheim-Collins at \$195 each;

(c) item 3000/3 had also been consigned on December 12, 1956, to The May Company at \$195, and invoiced to Constable January 25, 1957, for \$195;

(d) there are no further transactions shown as to the specific 1744 and 1755 items covered by the March 1, 1957, Constable consignment memorandum, but transactions as to similar items show as follows:

20 of the 1744 items were invoiced February 28, 1957, to Bamberg's for \$160 each;

18 others went to Oppenheim-Collins on February 28, 1957, also at \$160 each;

2 were consigned February 25, 1957 to The O'Neil Co. at \$175 and \$179.50;

1755 items are shown as having been invoiced or consigned February 25, 1957, and March 8, 1957, at \$160 and \$185 each.

5. Nowhere in the record is there any showing that any of the items covered by the January 5, 1957 and the March 1, 1957 consignment memoranda to Constable were ever sold or offered for sale by respondents at the prices shown thereon under the heading "Regular Cost." Such prices were completely fictitious. The only explanation of these prices was that a Constable buyer asked respondents that they put on the memorandum or bill "what was the costs of these skins, or regular cost I would normally sell these garments (for) to make a normal profit or a regular profit." There is no evidence that "Regular Cost" prices were ever used by respondents except on the transactions with Constable. The respondents maintained no records disclosing the facts upon which such prices were arrived at or the basis upon which the two sets of prices were determined.

6. In the matter of *Leviant Brothers, Inc., et al.*, Docket No. 7194, the facts were similar to those in the instant case—the respondents

had set forth fictitious prices on consignment memoranda issued by them in consigning fur products to Arnold Constable. In its opinion issued July 31, 1959, in that case, the Commission said:

It is clear from this language that a single representation to a prospective purchaser, as distinguished from a public announcement, may constitute advertising within the meaning of the section. Moreover, there is nothing in the wording of this section or in the legislative history of the Act to indicate that a consignment memorandum may not serve as a medium for conveying a representation or notice "which is intended to aid, promote, or assist directly or indirectly in the sale or offering for sale" of a fur product or fur.

* * * These consignment memorandums were received by the consignee prior to the consummation of the sale to it of the products described therein. It is clear, therefore, that these documents were intended to aid or assist in the sale or offering for sale of the products to Arnold Constable. We think the conclusion is inescapable that the fictitious prices listed therein constituted false representations to the prospective purchaser which were intended for the same purpose. It should be pointed out, in this connection that while there is no evidence that the consignee was deceived by these representations, the statute does not require any showing that a prospective purchaser was deceived or that the false representations were made under such circumstances that a prospective purchaser might be deceived. It is our opinion, therefore, that the fur products in question were falsely advertised within the meaning of §5(a)(5) of the Act.

7. It must be concluded, therefore, that the respondents have falsely and deceptively advertised and invoiced certain of their fur products in violation of §5(a)(5) and §5(b)(2) of the Fur Products Labeling Act, and have failed to maintain the records required by Rule 44(e) of the Rules and Regulations promulgated thereunder. Accordingly,

It is ordered. That respondents Getsos & Gershman, Inc., a corporation, and its officers, and Morris Gershman, individually and as an officer 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, 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. Representing, directly or by implication, on invoices that the regular or usual price of any fur product is any amount which is in excess of the price at which respondents have usually and 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 regular or usual price of any fur product is any amount which is in excess of the price at which respondents have usually and customarily sold such products in the recent regular course of their business;

C. Making pricing claims or representations in advertisements respecting comparative prices, percentage savings claims, or claims that prices are reduced from regular or usual prices, unless respondents maintain full and adequate records disclosing the facts upon which such claims or representations are based.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 23rd day of January, 1960, become the decision of the Commission; and, accordingly:

It is ordered. That respondents Getsos & Gershman, Inc., a corporation, and Morris Gershman, individually and as an officer 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.