

KITTY LEFIN TRADING AS KITTY LEFIN FUR HOUSE

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

Docket 7530. Complaint, July 13, 1959—Decision, Apr. 2, 1960

Order requiring a retail furrier in Schenectady, N.Y., to cease violating the
Fur Products Labeling Act by removing required labels after sale of fur

products but before delivery to customers; by failing to name the animal producing certain furs or the country of origin, on labels, invoices, and in advertising; failing to use the designation "secondhand used," and to identify the manufacturer, etc., on tags; by failing in advertising to disclose that some fur products were secondhand and that others were dyed; and by failing in other respects to comply with requirements of the Act.

Mr. Charles W. O'Connell supporting the complaint.

Mr. George A. Marcus of Schenectady, N.Y., for respondent.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

The complaint in this proceeding which was issued July 13, 1959 charges violation of the Federal Trade Commission Act and of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder. On August 31, 1959 respondent filed her answer denying the allegations of the complaint. Hearings were held in Schenectady, New York on September 17, 1959 and in New York, New York on September 24, 1959 at which evidence in support of and in opposition to the allegations of the complaint was received. The record contains 284 pages of testimony and a small number of exhibits.

Respondent has lived in Europe most of her life and has lived in the United States for only a few years and has considerable difficulty understanding and speaking the English language. It is not necessary to find whether she deliberately engaged in practices designed to mislead or deceive and the hearing examiner does not decide this. It could well be that she was unaware that any of the furs and fur products she advertised or sold were used but it is clear from the evidence that some of them were used fur garments.

Counsel supporting the complaint and respondent have filed proposed findings. The first two proposed findings filed by the respondent are identical with the first two proposed findings filed by counsel supporting the complaint and they are adopted, with certain deletions, in the findings. The remainder of the proposed findings filed by respondent are proposals that findings be made that counsel supporting the complaint has failed to prove certain allegations of the complaint. Counsel supporting the complaint has filed proposed findings which are in the main adopted. Proposed findings of fact and conclusions not herein specifically found or concluded are rejected.

Upon consideration of the entire record herein the hearing examiner makes the following findings of facts and conclusions.

1. Respondent Kitty Lefin is an individual trading as Kitty Lefin Fur House with her office and principal place of business located at 1022 State Street, Schenectady, New York.

2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondent has advertised "fur" and "fur products" in "commerce" and has offered for sale and sold "fur" and "fur products" which had been shipped and received in "commerce" as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act.

3. Respondent has removed or caused or participated in the removal, prior to the time certain fur products were delivered to the ultimate consumer, of labels required by the Fur Products Labeling Act to be affixed to such products, in violation of Section 3(d) of said Act and the Rules and Regulations promulgated thereunder. Respondent is a retail furrier and has, as she has testified, removed labels from certain fur products after their sale but before delivering them to her customers who were the ultimate consumers. She did this in order to use the labels in her inventory control system but in so doing failed to comply with Sec. 3(d) of the Fur Products Labeling Act, and the Rules and Regulations promulgated thereunder, both of which require that certain informative labels be attached at the time of delivery.

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. Some of the requirements which were not observed were failure to name the animal that produced the fur or its country of origin, failure to state the complete name of such animal, failure to use the designation "secondhand used" and the name or other identification of the manufacturer or other person required to be shown, the mingling of required information with non-required information and using handwriting to disclose required information instead of printing or hand printing.

5. Certain of said fur products were deceptively invoiced by respondent in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act, and in the manner and form prescribed by the Rules and Regulations promulgated thereunder. The invoices were deficient in that in some instances they failed to disclose the correct name of the animal that produced the fur used in fur products and the name of the country of origin of imported fur used in fur products.

6. 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 newspaper advertisements, con-

Order

56 F.T.C.

cerning said products, which were not in accordance with the provisions of Section 5(a) of the said Act and the Rules and Regulations promulgated thereunder; and which advertisements were intended to aid, promote and assist, directly or indirectly, in the sale, and offering for sale of said fur products. In such advertisements there were instances in which there was no disclosure of the name of the animal that produced the fur contained in the fur product as is set forth in the Fur Products Name Guide. In some instances the animal name Caracul was used. In another instance Persian was used as an animal name. Both names were used by respondent in describing Lamb and Sheep fur. Further, the advertisements did not disclose that certain of the furs were "second-hand used." The advertisements also failed to show that the Persian, which was really Persian Lamb, was dyed and the record shows that all Persian Lamb used in fur trade in this country is dyed. The advertisements contained information required under Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder which was not set forth in type of equal size and conspicuousness and in close proximity with each other as required by Rule 38(a).

CONCLUSION

The aforesaid acts and practices of respondent, as herein 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.

ORDER

It is ordered, That respondent Kitty Lefin, an individual trading as Kitty Lefin Fur House, or under any other name, 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, transportation or distribution, in commerce, of fur products; 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:

1. Removing, or causing the removal or participating in the removal of labels required to be affixed to fur products, prior to the time fur products are sold and delivered to the ultimate purchaser of such products.

1189

Order

2. Misbranding fur products by:

A. 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.

B. Setting forth on labels affixed to fur products:

(1) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, mingled with non-required information;

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

C. Failing to set forth separately on labels attached to fur products composed of two or more sections containing different animal furs the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder with respect to the fur comprising each section.

3. Falsely and deceptively invoicing fur products by:

A. Failing to furnish to purchasers of fur products an invoice showing all of the information required to be disclosed by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

B. Failing to furnish invoices to purchasers of fur products showing the item number or mark assigned to a fur product.

4. 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:

A. Fails to disclose:

(1) 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;

(2) That the fur product is composed of used fur when such is the fact;

(3) That the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

B. Fails to disclose that fur products contain or are composed of "secondhand used fur" when such is the fact.

C. Fails to set forth the information required under Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in type of equal size and conspicuousness and in close proximity with each other.

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 2nd day of April, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondent herein shall within sixty (60)