

AMERICAN DEB FURS, INC., ET AL.

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

Docket 7503. Complaint, June 2, 1959—Decision, Apr. 18, 1960

Order requiring a New York City furrier to cease violating the Fur Products Labeling Act by falsely identifying animals producing the fur in certain products; by invoicing which failed to state the country of origin of fur and to reveal that certain fur was dyed, and which set out fictitious "original" prices; and by failing in other respects to comply with labeling and invoicing requirements.

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

Klein and Laitman of New York, N.Y., for respondents.

INITIAL DECISION BY EDWARD CREEL, 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 labeling, invoicing and advertising certain fur products and by failing to maintain full and accurate records disclosing the facts upon which their claims were based.

After hearings, proposed findings and conclusions were submitted by counsel supporting the complaint and counsel for respondents. These proposals have been considered and to the extent they are accepted they are embodied herein. To the extent they are not embodied herein they are hereby rejected.

After considering the entire record, the following facts are found.

FINDINGS OF FACTS

1. Respondent American Deb Furs, 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 151-153 West 28th Street, New York, New York.

2. Respondent Herbert Fischbein is president and treasurer of said corporation and controls the acts, policies and practices of the corporate respondent. Ethel Harris is the secretary of the corporate respondent but does not exercise any executive functions for the corporation. Their address is the same as that of said corporate respondent.

3. 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, 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 the terms "commerce," "fur," and "fur product" are defined in the Fur Products Labeling Act.

4. Certain of said fur products were misbranded in that they were falsely and deceptively labeled or otherwise falsely and deceptively identified with respect to the name or names of the animal or animals that produced the fur from which said fur products had been manufactured in violation of Section 4(1) of the Fur Products Labeling Act. An example of this is the use of the term "broad-

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tail lamb" to describe the fur which is a processed lamb that is a different type of fur from broadtail lamb.

5. 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 the Rules and Regulations promulgated thereunder. Some labels did not reveal a registered name or other identification and some contained information on both sides of the label.

6. 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) The term "Dyed Broadtail-processed Lamb" was not set forth in the manner required by Rule 10.

(b) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was mingled with non-required information, in violation of Rule 29(a). Words such as ranch Silver Blue and sapphire were mingled with required information.

7. Certain of said fur products 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. Some invoices did not state the country of origin of the fur and at least one did not reveal that dyed Persian Lamb fur was dyed.

8. Certain of said fur products were falsely and deceptively invoiced in that the respondents set out on invoices certain "original" prices which were in fact fictitious, in violation of Section 5(b)(2) of the Fur Products Labeling Act. There is extensive proof in the record that during the one-year period that was checked there were numerous fur products that were previously consigned to a purchaser at a price higher than the current price but such higher price was in nearly all instances lower than the stated "original" price. In most instances these garments were not offered for sale prior to the beginning of this one-year period.

9. Certain fur products were not invoiced in compliance with Section 5(b)(1) of the Fur Products Labeling Act or in compliance with Rule 4 of the rules promulgated under the Wool Products Labeling Act in that the invoices showed names that varied from the names required by the Fur Products Name Guide and were abbreviated or incomplete. The names "Blk Dyed Russ Broadtail," "Blk Dyed Russ Persian L" were used instead of the correct and complete names in the Fur Products Name Guide.

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CONCLUSION

The aforesaid acts and practices of respondents 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 American Deb Furs, Inc., a corporation, and its officers, and Herbert Fischbein, 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 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 sale, manufacture for 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:

A. Misbranding fur products by:

1. Falsely or deceptively labeling or otherwise identifying any such products as to the name or names of the animal or animals that produced the fur from which such product was manufactured.
2. Failing to affix labels to fur products showing each element of information required to be disclosed under Section 4(2) of the Fur Products Labeling Act.
3. Failing to set forth the term "Dyed Broadtail processed Lamb" as required by Rule 10 of the "Rules and Regulations under the Fur Products Labeling Act."
4. Setting forth on labels attached to fur products information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder which is mingled with non-required information.

B. Falsely or deceptively invoicing fur products by:

1. Failing to furnish purchasers of the fur products an invoice showing each element of information required to be disclosed under Section 5(b)(1) of the Fur Products Labeling Act.
2. Setting forth on invoices pertaining to fur products the name or names of any animal or animals other than the name or names provided for in Section 5(b)(1) of the Fur Products Labeling Act.
3. Representing, directly or by implication, that the respondents' regular or usual price of any fur product is any amount in

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excess of the price at which the respondents have usually and customarily sold such product in the recent regular course of business.

4. Representing, directly or by implication, that any person's regular or usual price of any fur product is any amount in excess of the price at which such person has usually and customarily sold such product in the recent regular course of business.

5. Setting forth information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form.

6. Failing to set forth the term "Dyed Broadtail processed Lamb" as required by Rule 10 of the "Rules and Regulations under the Fur Products Labeling Act."

It is further ordered, That the complaint herein against respondent Ethel Harris, an individual, be, and the same hereby is, dismissed without prejudice to the right of the Commission to take such action in the future as the facts may warrant.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

This matter having come on to be heard by the Commission upon its review of the hearing examiner's initial decision; and

The Commission having determined that the initial decision is not appropriate in all respects to dispose of this proceeding:

It is ordered, That the findings of facts contained in the initial decision be, and they hereby are, modified (1) by striking the words "the Wool Products Labeling Act" appearing in lines 3 and 4 of paragraph 9 thereof, and inserting in lieu thereof the words "said Act," and (2) by adding the following paragraphs, the same to be designated as paragraphs 10 and 11 of the initial decision as modified:

10. The complaint additionally charged that the respondents have falsely and deceptively advertised certain of their fur products in violation of Section 5(a)(5) of the Fur Products Labeling Act through designating such merchandise with fictitious prices in consignment memorandums. Unless otherwise stated, the term respondents as used hereafter refers to respondents American Deb Furs, Inc., and Herbert Fischbein. Some of the consignment memorandums issued by respondents set forth "original" prices for the listed garments substantially in excess of the offering prices there stated; and in many instances the stated "original" prices were fictitious in that such articles had never been offered for sale by the respondents at those higher prices. Consignment memorandums are issued upon shipments by respondents to consignees who are to display and offer such wares for sale and billing therefor

by invoice occurs only in the event of subsequent sale. The fictitious prices listed on the consignment memorandums constituted false representations that the merchandise was being offered for sale at reductions in price from the higher ones listed. Such documents were used by respondents to aid and assist in the sale or offering for sale of the fur products to which they related and the false representations made respecting the prices were necessarily intended for the same purpose. The fur products so described in the respondents' consignment memorandums therefore were falsely advertised within the meaning of Section 5(a)(5) of the Fur Products Labeling Act.

11. The complaint additionally charged violation of Rule 44(e) by failure to maintain full and adequate records disclosing the facts upon which respondents' pricing and savings claims and representations were based. As found above, respondents have falsely and deceptively advertised certain of their fur products by representing that the prices thereof were reduced from what were in fact fictitious prices. Respondents also have failed to maintain record disclosing the facts upon which such representations were based and required by subsection (e) of Rule 44 and, consequently, have violated that subsection.

It is further ordered, That the order contained in the initial decision be, and it hereby is, modified by inserting the following paragraphs after subparagraph 6 of paragraph B thereof, the same to be designated as paragraphs C and D:

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 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.

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

It is further ordered, That the initial decision as herein modified be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the respondents, American Deb Furs, Inc., and Herbert Fischbein, shall, within sixty (60) days after service upon them of this order, file with the Commission a report,

