

Complaint

IN THE MATTER OF
S. POLLACK, INC., ET AL.

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

Docket 7779. Complaint, Feb. 9, 1960—Decision, Aug. 17, 1960

Consent order requiring furriers in Pottsville, Pa., to cease violating the Fur Products Labeling Act by using fictitious prices in advertising and labeling fur products; failing to set forth the term "Persian Lamb" on labels and invoices and the term "Dyed Mouton-processed Lamb" on invoices as required; representing falsely in advertising, by the word "Factory" and picturizations, that they owned a factory where they manufactured and remodeled fur products; and failing in other respects to comply with provisions of the Act.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that S. Pollack, Inc., a corporation, and Harold S. Pollack and Bernard S. Pollack, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent S. Pollack, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania with its office and principal place of business located at 22 North Center Street, Pottsville, Pa.

Individual respondents Harold S. Pollack and Bernard S. Pollack are president and secretary-treasurer respectively of the said corporate respondent and control, formulate and direct the acts, practices and policies of the said corporate respondent. Their office and principal place of business is the same as that of the corporate respondent.

PAR. 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 sale, advertising, and offering for sale, in commerce, and in the transportation and distribution, in commerce of fur products and have sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been

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shipped and received in commerce, as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, and have sold, advertised, offered for sale or processed fur products which have been shipped and received in commerce upon which fur products a substitute label has been placed by respondents.

PAR. 3. Certain of said fur products were misbranded in that labels affixed thereto contained fictitious prices and misrepresented the regular retail selling prices of such fur products in that the prices represented on such labels as the regular prices of the fur products were in excess of the retail prices at which the respondents usually and regularly sold such fur products in the recent regular course of its business, in violation of Section 4(1) of the Fur Products Labeling Act.

PAR. 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.

PAR. 5. 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) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in abbreviated form, in violation of Rule 4 of said Rules and Regulations.

(b) The term "Persian Lamb" was not set forth in the manner required, in violation of Rule 8 of the Rules and Regulations.

(c) 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) of said Rules and Regulations.

(d) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in handwriting on labels, in violation of Rule 29(b) of said Rules and Regulations.

PAR. 6. Certain of said fur products were falsely and deceptively invoiced by respondents 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.

PAR. 7. Certain of said fur products were falsely and deceptively invoiced in that respondents set forth on invoices pertaining to fur products the name of an animal other than the name of the animal

that produced the fur, in violation of Section 5(b)(2) of the Fur Products Labeling Act.

PAR. 8. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in abbreviated form, in violation of Rule 4 of said Rules and Regulations.

(b) The term "Persian Lamb" was not set forth in the manner required, in violation of Rule 8 of said Rules and Regulations.

(c) The term "Dyed Mouton-processed Lamb" was not set forth in the manner required, in violation of Rule 9 of said Rules and Regulations.

(d) Required item numbers were not set forth on invoices, in violation of Rule 40 of said Rules and Regulations.

PAR. 9. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that respondents caused the dissemination in commerce, as "commerce" is defined in said Act, of certain radio and newspaper advertisements, concerning 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.

PAR. 10. Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondents which appeared over the radio and in issues of the Pottsville Republican, a newspaper published in the City of Pottsville, State of Pennsylvania, and having a wide circulation in said state and various other States of the United States.

By means of said advertisements and others of similar import and meaning, not specifically referred to herein, respondents falsely and deceptively advertised fur products in that said advertisements:

(a) 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, in violation of Rule 38(a) of said Rules and Regulations.

(b) Represented prices of fur products as being the regular or usual prices where the so-called regular or usual prices were in fact fictitious in that they were not the prices at which said merchan-

dise was usually sold by respondents in the recent regular course of business, in violation of Section (a)(5) of the Fur Products Labeling Act.

PAR. 11. In advertising fur products for sale, as aforesaid, respondents falsely and deceptively advertised such fur products in violation of Section 5(a)(5) of the Fur Products Labeling Act, by representing in newspaper advertisements as follows: "Choose new styles and have your old fur coat remodeled at low cost during the summer months. All work done in Pollacks own factory", and by using the term "Factory" together with picturizations of Mink animals on their Mink Farm Show Room Building, that respondents own, operate and control a factory wherein they manufacture their own fur products and perform their own remodeling services thus affording savings to their customers, whereas respondents do not own, operate or control a factory; remodeling is performed on contract by another concern and respondents purchase their fur products and from distinct and separate sources of supply.

PAR. 12. In advertising fur products for sale as aforesaid respondents made claims and representations respecting the prices and values of fur products. Respondents in making such claims and representations failed to maintain full and adequate records disclosing the facts upon which such claims and representations were based in violation of Rule 44(e) of said Rules and Regulations.

PAR. 13. The aforesaid acts and practices of 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.

Frederick McManus Esq. supporting the complaint.

James P. Bohorad, Esq., of *Houck, Bohorad & Lipkin*, of Pottsville, Pa., for respondents.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

On February 9, 1960, the Federal Trade Commission issued a complaint against the above-named respondents in which they were charged with violating the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder by, among other things, misbranding, failing to brand properly, falsely and deceptively invoicing, failing to label or improperly labeling, and falsely and deceptively advertising respondents' fur products sold by them in interstate commerce. A true and correct copy of the complaint was served upon the respondents and each and all of them, as required by law. Thereafter respondents appeared by counsel and

agreed to dispose of this proceeding without a formal hearing pursuant to the terms of an agreement dated June 17, 1960, containing consent order to cease and desist. The agreement was submitted to the undersigned hearing examiner on June 22, 1960, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings. The agreement purports to dispose of this proceeding as to the respondents and each and all of them and contains the form of a consent cease and desist order which the parties have represented is dispositive of the issues involved in this proceeding. The agreement has been signed by the president of the corporate respondent, by the individual respondents, by the attorney for the respondents, by counsel supporting the complaint, and has been approved by the Assistant Director, Associate Director, and Director of the Bureau of Litigation of the Federal Trade Commission. In said agreement of June 17, 1960, respondents admit all of the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been made in accordance with such allegations. In the agreement the respondents waive: (a) any further procedural steps before the hearing examiner and the Commission; (b) the making of findings of fact or conclusions of law; and (c) all rights respondents may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

The parties further agree, in said agreement, that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Federal Trade Commission; that the order to cease and desist entered in this proceeding by the Commission may be entered without further notice to the respondents, and when so entered such order will have the same force and effect as if entered after a full hearing. Said order may be altered, modified or set aside in the manner provided for other orders. The complaint may be used in construing the terms of the order.

The parties have covenanted that the said agreement is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement of June 17, 1960, containing consent order, and it appearing that the order which is approved in and by said agreement disposes of all of the issues presented by the complaint as to all of the parties involved, said

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agreement of June 17, 1960, is hereby accepted and order filed at the same time this decision becomes the decision of the Federal Trade Commission pursuant to Section 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceeding. The undersigned hearing examiner having considered the agreement and proposed order and being of the opinion that the acceptance thereof will be in the public interest, makes the following findings and issues the following order:

FINDINGS

1. The Federal Trade Commission has jurisdiction over the parties and the subject matter of this proceeding;

2. Respondent S. Pollack, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania with its office and principal place of business located at 22 North Center Street, Pottsville, Pa.

3. Individual respondents, Harold S. Pollack and Bernard S. Pollack, are president and secretary-treasurer, respectively, of said corporate respondent and control, formulate and direct the acts, practices, and policies of the said corporate respondent. Their office and principal place of business is the same as that of the corporate respondent;

4. Respondents are engaged in commerce as "commerce" is defined in the Federal Trade Commission Act;

5. The complaint filed herein states a cause of action against the respondents under the Fur Products Labeling Act, and the Rules and Regulations issued pursuant thereto; and this proceeding is in the public interest. Now, therefore,

It is ordered, That S. Pollack, Inc., a corporation and its officers, and Harold S. Pollack and Bernard S. Pollack, 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 into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce of any fur product, or in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product which is 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. Misbranding fur products by:

A. Falsely and deceptively labeling or otherwise identifying such products as to regular prices thereof by any representation that the

regular or usual prices of such products are any amount in excess of the prices at which respondents have usually and customarily sold such products in the recent regular course of business.

B. 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.

C. 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 in abbreviated form.

(2) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder mingled with nonrequired information.

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

D. Failing to set forth the term "Persian Lamb" in the manner required.

2. Falsely or deceptively invoicing fur products by:

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

B. Setting forth the name or names of any animal or animals other than the name or names specified in Section 5(b)(1)(A) of the Fur Products Labeling Act.

C. 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.

D. Failing to set forth the term "Persian Lamb" in the manner required.

E. Failing to set forth the term "Dyed Mouton Processed Lamb" in the manner required.

F. Failing to set forth the item number or mark assigned to a fur product.

3. 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 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.

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B. Represents, directly or by implication, that respondents own, operate or control a factory, remodel fur products or manufacture fur products, unless such is the fact.

C. 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 business.

D. Misrepresents in any manner the savings available to purchasers of respondents' fur products.

4. Making claims or representations in advertisements respecting prices or values of fur products unless there are maintained by respondents full and adequate records disclosing the facts upon which such claims and 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 17th day of August 1960, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents herein 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.