

and as officers of said corporation; and Pearl S. Rymingham, 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.

IN THE MATTER OF
L. L. BERGER, INC.

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

Docket 7965. Complaint, June 22, 1960—Decision, Sept. 29, 1960

Consent order requiring a Buffalo, N.Y., furrier to cease violating the Fur Products Labeling Act by false advertising in newspapers which represented prices of fur products as reduced from fictitious "regular" prices; which represented, by use of such statements as "½ off original prices", that usual retail prices were reduced by such percentage; which represented prices as reduced without giving the time of compared higher prices; and which contained names of animals other than those producing certain furs; and by failing to maintain adequate records as a basis for price and value claims.

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 L. L. Berger, Inc., a corporation, hereinafter referred to as respondent, has 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 L. L. Berger, 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 principal place of business located at 514 Main Street, Buffalo, N.Y.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondent has introduced, sold, advertised, offered for sale, transported and distributed fur products in commerce, and has 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 "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. 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, 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. 4. Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondent which appeared in issues of the Buffalo Courier Express, a newspaper published in the city of Buffalo, State of New York, and having a wide circulation in said State and in various other States of the United States.

By means of the aforesaid advertisements and through others of the same import and meaning, not specifically referred to herein, respondent falsely and deceptively advertised its fur products in that said advertisements:

(a) Represented prices of fur products as having been reduced from regular or usual prices where the so-called regular or usual

Decision

57 F.T.C.

prices were in fact fictitious in that they were not the prices at which said merchandise was usually sold by respondent in the recent regular course of business in violation of Section 5(a)(5) of the Fur Products Labeling Act and Rule 44(a) of said Rules and Regulations.

(b) Represented through the use of percentage savings claims through such statements as "½ off original prices" that the regular or usual retail prices charged by respondent for fur products in the recent regular course of business were reduced in direct proportion to the percentage of savings stated when such was not the fact in violation of Section 5(a)(5) of the Fur Products Labeling Act.

(c) Represented prices of fur products as having been reduced from previous higher prices without giving the time of such compared higher prices in violation of Rule 44(b) of said Rules and Regulations.

(d) Contained the name or names of an animal or animals other than those producing the fur contained in the fur product in violation of Section 5(a)(5) of the Fur Products Labeling Act.

PAR. 5. Respondent in advertising fur products for sale as aforesaid made claims and representations respecting prices and values of fur products. Respondent 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. 6. The aforesaid acts and practices of respondent, 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.

Mr. Harry E. Middleton, Jr., supporting the complaint.

Jaecle, Fleischmann, Kelly, Swart & Augspurger, of Buffalo, N.Y., for respondent.

INITIAL DECISION OF JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on June 22, 1960, charging it with having violated the Fur Products Labeling Act and the Rules and Regulations issued thereunder, and the Federal Trade Commission Act, through the false and deceptive advertising of certain fur products. After being served with said complaint, respondent appeared by counsel and thereafter entered into an agreement, dated August 3, 1960, containing a consent order to cease and desist purporting to dispose of all this proceeding as to all parties. Said agreement

which has been signed by respondent, by counsel for said respondent, and by counsel supporting the complaint, and approved by the Director, Acting Associate Director, and Acting Assistant Director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondent, pursuant to the aforesaid agreement, has admitted all the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that respondent waives any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law and all of the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has been agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing and that the complaint may be used in construing the terms of said order. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, and that said agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, and it appearing that the order provided for in said agreement covers all the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties, said agreement is hereby accepted and is ordered filed upon this decision's becoming the decision of the Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and the hearing examiner, accordingly, makes the following jurisdictional findings and order:

1. Respondents L. L. Berger, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 514 Main Street, in the city of Buffalo, State of New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent hereinabove named. The complaint states a cause of action against said respondent under the Fur Products Labeling Act and the Federal Trade Commission Act, and this proceeding is in the interest of the public.

Decision

57 F.T.C.

ORDER

It is ordered, That L. L. Berger, Inc., a corporation, and its officers, 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 in commerce, or the 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 products" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Falsely or deceptively advertising fur products through the use of any advertisement, 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. 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 respondent has usually and customarily sold such products in the recent regular course of business.

B. Represents directly or by implication through percentage savings claims that the regular or usual retail prices charged by respondent for fur products in the recent regular course of business were reduced in direct proportion to the amount of savings stated, when contrary to the fact.

C. Bases comparative prices on former or original prices that are not the prevailing prices at the time of the advertisement without stating the times or dates of the compared prices.

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

E. Sets forth the name or names of any animal or animals other than the name or names provided in Section 5(a)(1) of the Fur Products Labeling Act.

2. Making price claims and representations respecting prices and values of fur products unless there is maintained by respondent 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 29th day of September 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist.
