

Complaint

57 F.T.C.

IN THE MATTER OF

MAYER & SCHMIDT ET AL.

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

Docket 7987. Complaint, June 24, 1960—Decision, Nov. 4, 1960

Consent order requiring a department store in Tyler, Tex., and the lessee of its fur department to cease violating the Fur Products Labeling Act by advertising in newspapers which failed to disclose the names of animals producing certain furs and to use the term "Dyed Broadtail processed Lamb" as required, and by failing in other respects to comply with labeling, invoicing, and advertising requirements.

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 Mayer & Schmidt, a corporation, and Klasky, Inc., a corporation, and Lyle L. Klasky, individually and as an officer of Klasky, Inc., 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 Mayer & Schmidt, a retail department store, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas with its office and principal place of business located at Tyler, Texas.

Respondent Klasky, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Arkansas, with its home office located in the fur department of Mayer & Schmidt in Tyler, Texas. Respondent Klasky, Inc., leases and operates the fur department located in respondent Mayer & Schmidt department store. All advertising and purchasing for the fur department is carried on under the name of Mayer & Schmidt. Klasky, Inc., also leases and operates fur departments in other department stores located in Lubbock, Texas, Shreveport, Louisiana, and Texarkana, Arkansas.

Respondent Lyle L. Klasky is president of the corporate respondent Klasky, Inc. The individual respondent controls, directs and formulates the acts, practices and policies of the said corporate

respondent Klasky, Inc. The address of said individual respondent is the same as this corporate respondent, located in the fur department of Mayer & Schmidt in Tyler, Texas.

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

PAR. 3. 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. 4. Certain of said fur products were falsely and deceptively invoiced by respondents in that they were not invoiced as required under the provisions of 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. 5. Certain of said products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act and in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in the following respects:

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

PAR. 6. 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 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. 7. Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondents which appeared in various issues of The Tyler Courier Times and the Tyler Courier Times Telegraph, morning and evening editions of a newspaper published in the City of Tyler, State of Texas, and having a wide circulation in said state and the adjacent areas in 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) Failed to disclose the name or names of the animal or animals that produced the furs contained in the fur product as set forth in the Fur Products Name Guide, in violation of Section 5(a)(1) of the Fur Products Labeling Act.

(b) Failed to use the term "Dyed Broadtail processed Lamb" as required, in violation of Rule 10 of said Rules and Regulations.

PAR. 8. Respondents have made pricing claims and savings claims and representations in advertising, and failed to maintain full and adequate records disclosing the facts upon which such claims and representations were purportedly based in violation of Rule 44(e) of the Rules and Regulations under the Fur Products Labeling Act.

PAR. 9. 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.

Mr. Michael P. Hughes and Mr. Charles W. O'Connell for the Commission.

Spruiell, Lowry, Potter, Lasater & Guinn, by *Mr. John H. Minton, Jr.*, of Tyler, Tex., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on June 24, 1960, issued its complaint herein, charging the above-named respondents with having violated the provisions of both the Federal Trade Commission Act and the Fur Products Labeling Act, together with the Rules and Regulations promulgated thereunder, and the respondents were duly served with process.

On September 21, 1960, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement Containing Consent Order To Cease And Desist," which had been entered into by and between respondents and the attorneys for both parties, under date of September 8, 1960, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

On due consideration of such agreement, the hearing examiner finds that said agreement, both in form and in content, is in accord with § 3.25 of the Commission's Rules of Practice for Adjudicative

Proceedings, and that by said agreement the parties have specifically agreed to the following matters:

1. Respondent Mayer & Schmidt, a retail department store, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at Tyler, Texas.

Respondent Klasky, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Arkansas, with its home office located in the fur department of Mayer & Schmidt, in Tyler, Texas.

Individual respondent Lyle L. Klasky is an officer of corporate respondent Klasky, Inc. The individual respondent controls, directs and formulates the acts, practices and policies of the said corporate respondent Klasky, Inc. The address of said individual respondent is the same as corporate respondent Klasky, Inc., located in the fur department of Mayer & Schmidt in Tyler, Texas.

2. Respondents admit all the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

3. This agreement disposes of all of this proceeding as to all parties.

4. 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 of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

5. The record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement.

6. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

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

8. The following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondents. When so entered it shall have the same force and effect as if entered after a full hearing. It 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.

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Upon due consideration of the complaint filed herein and the said "Agreement Containing Consent Order To Cease And Desist," the latter is hereby approved, accepted and ordered filed, the same not to become a part of the record herein, however, unless and until it becomes part of the decision of the Commission. The hearing examiner finds from the complaint and the said "Agreement Containing Consent Order To Cease And Desist" that the Commission has jurisdiction of the subject matter of this proceeding and of each of the respondents herein; that the complaint states a legal cause for complaint under the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations promulgated by the Commission under the latter Act, against each of the respondents, both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said agreement is appropriate for the just disposition of all of the issues in this proceeding as to all of the parties hereto; and that said order therefore should be, and hereby is, entered as follows:

It is ordered, That respondents Mayer & Schmidt and Klasky, Inc., corporations, and their officers, and Lyle L. Klasky, individually and as officer of Klasky, Inc., 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, offering for sale, transportation or distribution of fur products, in commerce, 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. 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 § 4(2) of the Fur Products Labeling Act;

2. Falsely or deceptively invoicing fur products by:

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

b. Failing to set forth on invoices the item number or mark assigned to such fur product;

3. Falsely or deceptively advertising fur products through the use of any advertisement, representation, public announcement, or no-

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tice 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 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 in the Rules and Regulations;

b. Fails to set forth the term "Dyed Broadtail Processed Lamb" where an election is made to use that term instead of Dyed Lamb;

4. Making claims or representations in advertisements respecting prices or values of fur products unless respondents maintain 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 4th day of November 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Mayer & Schmidt and Klasky, Inc., corporations, and their officers, and Lyle L. Klasky, individually and as officer of Klasky, Inc., 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.
