

Complaint

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IN THE MATTER OF

SAM ASHKENAS ET AL. TRADING AS
B. A. FUR COMPANYCONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS*Docket 7884. Complaint, May 12, 1960—Decision, Nov. 23, 1960*

Consent order requiring furriers in Nassau, N.Y., to cease violating the Fur Products Labeling Act by labeling, invoicing, and advertising fur products deceptively with respect to the name of the animal producing the fur; by invoicing fur products falsely to show that imported furs contained therein were domestic; by advertising "Factory prices direct to you" when part of the fur products thus advertised were purchased from outside supply sources; and by failing in other respects to comply with requirements 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 Sam Ashkenas and William Ashkenas, individually and as copartners trading as B. A. Fur Company, 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. Sam Ashkenas and William Ashkenas are copartners trading as B. A. Fur Company with their office and principal place of business located at 18 Lake Avenue, Nassau, New York.

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 manufacture for introduction into commerce, and in the advertising and offering for sale, 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.

PAR. 3. 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.

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) 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.

(c) 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.

(d) Required item numbers were not set forth on labels, in violation of Rule 40 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 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 5(b)(2) of the Fur Products Labeling Act.

PAR. 8. Certain of said fur products were falsely and deceptively invoiced in that said fur products were invoiced to show that the furs contained therein were domestic when in fact such furs were imported in violation of Section 5(b)(2) of the Fur Products Labeling Act.

PAR. 9. Certain of said fur products were falsely and deceptively involved in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations

promulgated thereunder in that 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 40 of said Rules and Regulations.

PAR. 10. 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. 11. Among and included in the advertisements, as aforesaid, but not limited thereto, were advertisements of respondents which appeared in issues of the Times Union, a newspaper published in the City of Albany, State of New York, 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) Failed to disclose the name or names of the animals that produced the fur contained in the fur products, as set forth in the Fur Products Name Guide, in violation of Section 5(a)(1) of the Fur Products Labeling Act.

(b) 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.

PAR. 12. In advertising fur products for sale, as aforesaid, respondents falsely and deceptively advertised fur products, or otherwise falsely and deceptively identified said fur products 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 5(a)(5) of the Fur Products Labeling Act.

PAR. 13. In advertising fur products for sale, as aforesaid, respondents' advertisements contained the false representation "Factory prices direct to you," thereby implying that purchasers could save amounts equal to the middleman's profit when in fact part of the fur products thus advertised and offered for sale were not manufactured by the respondents but were purchased from separate and distinct outside sources of supply, in violation of Section 5(a)(5) of the Fur Products Labeling Act.

PAR. 14. 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.

Charles W. O'Connell, Esq., for the Commission.

Richard E. Bolton, Esq., of Albany, N.Y., for respondents.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on May 12, 1960, charging them with having violated the Fur Products Labeling Act, the rules and regulations issued thereunder, and the Federal Trade Commission Act, by misbranding, falsely invoicing and falsely representing their fur products. Respondents appeared by counsel and entered into an agreement, dated September 26, 1960, containing a consent order to cease and desist, disposing of all the issues in this proceeding without further hearings, which agreement has been duly approved by the Bureau of Litigation. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with § 3.25 of the Rules of Practice of the Commission.

Respondents, pursuant to the aforesaid agreement, have admitted all of the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been made duly in accordance with such allegations. Said agreement further provides that respondents waive all further procedural steps before the hearing examiner or the Commission, including the making of findings of fact or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has also been agreed that the record herein shall consist solely of the complaint and said 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 Commission; that said 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, that said order to cease and desist shall have the same force and effect as if entered after a full hearing and may be altered, modified, or set aside in the manner provided for other orders, and that the complaint may be used in construing the terms of the order.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing the consent

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order, and it appearing that the order and agreement cover all of the allegations of the complaint and provide for appropriate disposition of this proceeding, the agreement is hereby accepted and ordered filed upon this decision and said agreement becoming part of the Commission's decision pursuant to §§ 3.21 and 3.25 of the Rules of Practice, and the hearing examiner accordingly makes the following findings, for jurisdictional purposes, and order:

1. Respondents are Sam Ashkenas and William Ashkenas and are copartners trading as B. A. Fur Company, with their office and principal place of business located at 18 Lake Avenue, in the City of Nassau, State of New York.

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

ORDER

It is ordered, That Sam Ashkenas and William Ashkenas individually and as copartners trading as B. A. Fur Company, or under any other trade name, 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, 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 have been 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. 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;

2. Falsely or deceptively labeling or otherwise falsely or deceptively identifying any such product as to the name of the animal that produced the fur from which such product was manufactured;

3. Setting forth on labels affixed to fur products:

(a) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form;

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

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

4. Failing to set forth on labels the item number or mark assigned to a fur product.

B. Falsely or deceptively invoicing fur products by:

1. 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;

2. Setting forth the name of an animal other than the name of the animal that produced the fur from which a fur product is manufactured;

3. Representing that fur products contain "domestic furs" when in fact such furs are imported;

4. 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.

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:

1. Fails to disclose the name of the animal that produced the fur contained in the fur product as set forth in the Fur Products Name Guide, and as prescribed under the Rules and Regulations;

2. Sets forth the name of an animal other than the name of the animal that produced the fur from which a fur product is manufactured;

3. 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;

4. Represents, directly or by implication, that any such fur products are being offered for sale at factory prices or without a middleman's profit, when such is not the fact;

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

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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 23d day of November 1960, become the decision of the Commission; and, accordingly:

It is ordered. That the above-named respondents shall, within