

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 7th day of March, 1961, become the decision of the Commission; and, accordingly:

It is ordered, That the above-named respondents 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
MAX SCHARFMAN

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

Docket 8144. Complaint, Oct. 17, 1960—Decision, Mar. 7, 1961

Consent order requiring a furrier in New Rochelle, N. Y., to cease violating the Fur Products Labeling Act by using on labels of fur products the registered identification number of a person or concern not connected with marketing them; by advertising in newspapers which failed to disclose that certain products contained artificially colored fur, represented falsely that purchasers of advertised furs could "Save up to \$200", that fur products concerned were composed of "choicest skins", that he manufactured his fur products, and that prices were reduced from regular prices which were in fact fictitious; and by failing to maintain adequate records as a basis for his pricing and value claims; and by failing in other respects to conform to labeling and invoicing 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 Max Scharfman, an individual, 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 Max Scharfman, an individual, prior to about April 5, 1960, traded as Rosalle Furs, with his office and principal place of business located at 178 North Avenue, New

Rochelle, New York. The business is now operated as Rosalle Furs, Inc., a corporation, at the same address.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondent, trading as Rosalle Furs, 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 sold, advertised, offered for sale, transported and distributed fur products which had 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. Respondent falsely and deceptively labeled or otherwise falsely or deceptively identified fur products by using the registered identification number of a person or concern not connected with marketing such fur products 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 falsely and deceptively invoiced by respondent 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. 6. 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 that required item numbers were not set forth on invoices in violation of Rule 40 of said Rules and Regulations.

PAR. 7. 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. 8. Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondent which appeared in issues of the Standard Star, a newspaper published in the City of New Rochelle, 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, respondent falsely and deceptively advertised fur products in that said advertisements:

(a) Failed to disclose that fur products contained or were composed of bleached, dyed or otherwise artificially colored fur when such was the fact in violation of Section 5(a)(3) of the Fur Products Labeling Act.

(b) Represented through such statements as "Save up to \$200" that such savings could be effected through the purchase of respondent's fur products, when such was not the fact, in violation of Section 5(a)(5) of the Fur Products Labeling Act.

(c) Represented that fur products were composed of "choicest skins" when such was not the fact, in violation of Section 5(a)(5) of the Fur Products Labeling Act.

(d) Represented that respondent was a manufacturer of fur products, when such was not the fact, in violation of Section 5(a)(5) of the Fur Products Labeling Act.

(e) Represented prices of fur products as having been reduced from 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 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.

PAR. 9. In advertising fur products for sale as aforesaid respondent made claims and representations respecting the 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. 10. 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.

DeWitt T. Puckett, Esq., supporting the complaint.

Jonas H. Bernstein, Esq., of *Bernstein & Bernstein*, of New York, N.Y., for respondent.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

On October 17, 1960, the Federal Trade Commission issued a complaint against the above-named respondent, in which he was

charged with violating the Federal Trade Commission Act, and the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder by, among other things, failing to label and use the registered identification number of a person or concern not connected with marketing such fur products in accordance with the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, falsely and deceptively invoicing, falsely and deceptively advertising, and making claims and representations respecting prices and values of fur products without keeping adequate records of such products sold by it in interstate commerce. A true and correct copy of the complaint was served upon the respondent, as required by law. Thereafter respondent appeared by counsel and agreed to dispose of this proceeding without a formal hearing pursuant to the terms of an agreement dated December 14, 1960, containing consent order to cease and desist. The agreement was submitted to the undersigned hearing examiner on January 5, 1961, in accordance with §3.25 of the Commission's Rules of Practice for Adjudicative Proceedings. The agreement purports to dispose of this proceeding as to all parties 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 respondent, the attorneys for both parties, 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 respondent admits all of the jurisdictional facts alleged in the complaint and agrees that the record may be taken as if findings of jurisdictional facts had been made in accordance with such allegations. In the agreement the respondent waives: (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 respondent 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 respondent, 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.

Findings

58 F.T.C.

The parties have covenanted that the said agreement is for settlement purposes only and does not constitute an admission by respondent that he 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 of December 14, 1960, containing consent order, and it appearing that the order which is approved in and by said agreement disposes of all the issues presented by the complaint as to all of the parties involved, said agreement of December 14, 1960, is hereby accepted and approved as complying with §§3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings. 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 Max Scharfman is an individual with his office and principal place of business located at 178 North Avenue, in the City of New Rochelle, State of New York;

3. Respondent is engaged in commerce as "commerce" is defined in the Federal Trade Commission Act and the Fur Products Labeling Act;

4. The complaint filed herein states a cause of action against the respondent under the Federal Trade Commission Act and 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 respondent Max Scharfman, his representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, or advertising or offering for sale, 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 product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding fur products by:

A. Using the registered identification number of a person or concern not connected with marketing such fur products;

B. Failing to affix labels to fur products showing in words and figures plainly legible all 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 invoices 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 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 disclose that the fur product contains or is composed of bleached, dyed or otherwise artificially colored fur when such is the fact;

B. Represents, directly or by implication, that fur products are composed of choicest skins when such is not the fact;

C. Represents, directly or by implication, that respondent is a manufacturer of fur products or words of similar import when such is not the fact;

D. 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;

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

4. Making claims and representations respecting prices and values of fur products unless respondent maintains 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 7th day of March, 1961, become the decision of the Commission; and, accordingly:

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

Decision

58 F.T.C.

IN THE MATTER OF
DIERKS FORESTS, INC., ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 8 OF THE CLAYTON ACT

Docket 8113. Complaint, Sept. 14, 1960—Decision, Mar. 8, 1961

Order dismissing—after resignation of the two directors concerned from the Board of Directors of Pickering Lumber Corp.—charges that two competing lumber companies illegally permitted two individuals to serve as their common directors.

Mr. Lynn C. Paulson for the Commission.

Watson, Ess, Marshall & Enggas, by *Mr. Elton L. Marshall*, and
Mr. George T. Morton, Jr., of Kansas City, Mo., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on September 14, 1960, charging Respondents with violation of §8 of the Clayton Act (15 U.S.C., §19, 38 Stat. 732, as amended by 49 Stat. 718), by permitting the individual Respondents to serve as directors at the same time, of both corporate Respondents, which ship and sell in interstate commerce some of the same classes of products, and are in competition between themselves in the offering for sale, sale and distribution of some of such products.

Thereafter, on January 11, 1961, counsel for the Respondents submitted a Motion To Dismiss, accompanied by a Certificate of Robert I. Donnellan, Secretary of Respondent Pickering Lumber Corporation, showing that, on December 2, 1960, Respondents Frederick H. Dierks and Henry N. Ess submitted their resignations as members of the Board of Directors of Pickering Lumber Corporation to be effective December 31, 1960; that their resignations were accepted; and that they ceased to be directors of Pickering Lumber Corporation on December 31, 1960. Also on January 11, 1961, counsel supporting the complaint submitted his Answer To Motion To Dismiss, stating that he does not oppose said motion, since the interlock of Directors alleged in the complaint has been removed as evidenced by the Certificate filed with Respondents' Motion To Dismiss, and there is no reason to believe a repetition of the condition alleged will occur.

In *Docket No. 7333, Booth-Kelly Lumber Company, et al.*, which presented a similar problem, the Commission held that upon the filing of a motion to dismiss supported by affidavit showing that the Respondents upon whose employment as directors the charge of