

Complaint

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IN THE MATTER OF
AMERICAN FUR COAT CO., INC., ET AL.

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

Docket 7991. Complaint, June 24, 1960—Decision, Mar. 30, 1961

Consent order requiring New York City furriers to cease violating the Fur Products Labeling Act by failing to set forth the term "Dyed Mouton processed Lamb" as required on labels and invoices, by failing to disclose on invoices when fur products were composed of gills, and by failing to comply with labeling and invoicing requirements in other respects.

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 American Fur Coat Co., Inc., a corporation, Benjamin Dretel and Martha Dretel, individually and as officers of said corporation, and Bert Arak, individually and as manager in charge of business operations, 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. American Fur Coat Co., 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 245 West 27th Street, New York, New York. Benjamin Dretel and Martha Dretel are president and secretary-treasurer, respectively, of the said corporate respondent. Bert Arak is manager in charge of business operations. These individuals 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 said 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 manufacture for 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 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 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) The term "Dyed Mouton processed Lamb" was not set forth in the manner required where an election was made to use that term instead of "Dyed Lamb" in violation of Rule 9 of the 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. 4. 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. 5. 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) The term "Dyed Mouton processed Lamb" was not set forth in the manner required where an election was made to use that term instead of "Dyed Lamb" in violation of Rule 9 of the said Rules and Regulations.

(b) Failed to disclose that fur products are composed in whole or substantially of gills when such is the fact, in violation of Rule 20 of said Rules and Regulations.

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

PAR. 6. 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.

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

George Herbert Goodrich, Esq., of *Guggenheimer, Untermeyer & Goodrich*, of Washington, D. C., for respondents.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

On June 24, 1960, the Federal Trade Commission issued a complaint against the above-named respondents, in which they were 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, misbranding by failing to label, affixing labels which fail to comply with minimum size requirements, mingling required with non-required information, failing to set out completely on one side of a label information required by the law and rules and regulations promulgated thereunder, setting forth required information in smaller type than is permitted by law, and falsely and deceptively invoicing fur products sold by respondents 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 January 16, 1961, containing consent order to cease and desist. The agreement was submitted to the undersigned hearing examiner on January 27, 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 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 corporate respondent by its president, by the individual respondents individually and as officers and/or business manager of said corporation, by the attorney for the respondents, by counsel supporting the complaint, and has been approved by the Assistant Director, Associate Director and Acting Director of the Bureau of Litigation of the Federal Trade Commission. In said agreement 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 January 16, 1961, 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 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, and this proceeding is in the public interest;

2. Respondent American Fur Coat Co., 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 245 West 27th Street, in the City of New York, State of New York;

3. Individual respondents Benjamin Dretel and Martha Dretel are officers of the corporate respondent and Bert Arak is manager in charge of business operations. These individuals control, formu-

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late and direct the acts, practices and policies of the said corporate respondent, and their office and principal place of business is the same as that of the said corporate respondent.

4. Respondents are engaged in commerce as "commerce" is defined in the pertinent statutes which are invoked by the complaint filed herein. Now, therefore,

It is ordered, That American Fur Coat Co., Inc., a corporation, and its officers, and Benjamin Dretel and Martha Dretel, individually and as officers of said corporation, and Bert Arak, individually and as manager in charge of business operations, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, manufacture for introduction, 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, 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:

1. Misbranding fur products by:

A. Failing to set forth the term "Dyed Mouton processed Lamb" where an election is made to use that term instead of Dyed Lamb;

B. 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 mingled with non-required information;

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

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

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 the term "Dyed Mouton processed Lamb" where an election is made to use that term instead of Dyed Lamb;

C. Failing to disclose that fur products are composed in whole or in substantial part of paws, tails, bellies, sides, flanks, gills, ears, throats, heads, scrap pieces, or waste furs, when such is the fact;

D. Failing to set forth on invoices the item number or mark assigned to a fur product.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission having considered the hearing examiner's initial decision, filed February 14, 1961, accepting an agreement containing a consent order theretofore executed by the respondents and counsel in support of the complaint; and

It appearing that the hearing examiner's statement in the first sentence of the initial decision purporting to set forth the alleged violations of law involved in this proceeding includes certain allegations not contained in the complaint; and

The Commission being of the opinion that this erroneous summation of the allegations of the complaint should be corrected:

It is ordered, That the initial decision be, and it hereby is, amended by substituting for the first sentence thereof the following:

The Federal Trade Commission issued its complaint against respondents on June 24, 1960, charging them with having violated the Fur Products Labeling Act and the rules and regulations promulgated thereunder by misbranding and falsely and deceptively invoicing certain fur products.

It is further ordered, That the initial decision, as so amended, shall, on the 30th day of March 1961, become the decision of the Commission.

It is further ordered, That the 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 contained in the aforesaid initial decision, as amended.

IN THE MATTER OF
FABER BROTHERS, INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2(a)
OF THE CLAYTON ACT

Docket 8062. Complaint, July 29, 1960—Decision, Mar. 30, 1961

Consent order requiring Chicago distributors of sporting goods in the five-State area of Illinois, Wisconsin, Indiana, Michigan, and Iowa, with annual sales in excess of \$2,000,000, to cease discriminating in price in violation of Sec. 2(a) of the Clayton Act by such practices as selling to its customers classified as "Favorite Sports Stores" on the basis of cost plus 10% while charging their competitors cost plus 33%.

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COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated and is now violating the provisions of Section 2(a) of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C. Title 15, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Faber Brothers, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 350 West Ontario Street, Chicago, Illinois.

PAR. 2. Respondent is now and has been engaged in the business of selling and distributing sporting goods. Respondent sells its products of like grade and quality to a large number of retailers, including sporting goods stores, hardware stores, hobby shops and department stores, in a five state area of Illinois, Wisconsin, Indiana, Michigan and Iowa, for use, consumption or resale therein. Respondent's sales of its products are substantial, exceeding \$2,000,000 annually.

PAR. 3. Respondent sells and causes its products to be transported from its principal place of business in the State of Illinois to customers located in other States of the United States. There has been at all times mentioned herein a continuous course of trade in said products in commerce, as "commerce" is defined in the Clayton Act, as amended.

PAR. 4. In the course and conduct of its business in commerce, respondent is in substantial competition with other corporations, partnerships, individuals and firms engaged in the sale and distribution of sporting goods.

Many of respondent's purchasers are likewise in competition with each other in the resale of respondent's products within the same trading areas.

PAR. 5. In the course and conduct of its business, and particularly since 1958, respondent is now and has been discriminating in price between different purchasers of its products by selling said products to some purchasers at substantially higher prices than the prices charged competing purchasers for such products of like grade and quality.

PAR. 6. For example, respondent classifies certain of its customers "Favorite Sports Stores". Respondent sells goods of like grade and quality to customers not so designated and who compete with the "Favorite Sports Stores" in the resale of respondent's products. Respondent sells to customers designated "Favorite Sports Stores"

on the basis of cost plus 10%. Customers not designated "Favorite Sports Stores" pay the usual price of respondent, which is approximately cost plus 33%.

PAR. 7. The effect of such discriminations in price made by respondent, as hereinbefore set forth, may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and its purchasers are respectively engaged, or to injure, destroy or prevent competition with respondent and with purchasers of respondent who receive the lower prices.

PAR. 8. The discriminations in price, as hereinbefore alleged, are in violation of the provisions of Section 2(a) of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. John Perechinsky supporting the complaint.

Mr. Sidney M. Libit, of Chicago, Ill., for respondent.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on July 29, 1960, charging it with having violated Section 2(a) of the Clayton Act, as amended. After being served with said complaint, respondent entered into an agreement, dated January 19, 1961, containing a consent order to cease and desist purporting to dispose of all of 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 and Associate 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 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

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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 of 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. Respondent Faber Brothers, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 350 West Ontario Street, in the City of Chicago, State of Illinois.

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 provisions of the Clayton Act.

ORDER

It is ordered, That respondent Faber Brothers, Inc., a corporation, and its officers, employees, agents and representatives, directly or through any corporate or other device, in or in connection with the offering for sale, sale or distribution of any of its products in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from discriminating, directly or indirectly, in the price of such products of like grade and quality:

1. By selling such products to any purchaser at net prices higher than the net prices charged any other purchaser competing in the resale or distribution of such products;

2. By selling such products to any purchaser at a price which is lower than the price charged any other purchaser at the same level of trade, where such lower price undercuts the price at which the purchaser charged the lower price may purchase such products of like grade and quality from another seller.

3. By granting or allowing any secret rebate, discount, allowance or other consideration to any purchaser while not granting or allowing an equivalent rebate, discount, allowance or other consideration to any other purchaser who competes in the resale or

distribution of such products with the purchaser who is granted or allowed the secret rebate, discount, allowance or other consideration.

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 30th day of March 1961, become the decision of the Commission; and, accordingly:

It is ordered, That the 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.
