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Complaint

trading as Abrahams Brothers, 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

GEORGE L. WESTENBERGER ET AL.
TRADING AS WESTENBERGER'S

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

Docket 8189. Complaint, Nov. 28, 1960—Decision, Apr. 6, 1961

Consent order requiring Springfield, Ill., furriers to cease violating the Fur Products Labeling Act by advertising in newspapers which failed to disclose the names of animals producing certain furs or the country of origin of imported furs, represented prices as reduced from so-called regular prices which were, in fact, fictitious, and, by use of such phrases as "Save to 20% or more on any fur in stock", that regular prices were reduced in that percentage when such was not true, and which failed in other respects to comply with requirements of the Act; and by failing to keep adequate records as a basis for pricing 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 George L. Westenberg and Mary E. Westenberg II, individually and as copartners trading as Westenberg's, 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. George L. Westenberg and Mary E. Westenberg II are individuals and copartners trading as Westenberg's with their office and principal place of business located at 206 South Sixth Street, Springfield, Illinois.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents in conjunction with lessees of their fur department, 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 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. 4. Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondents which appeared in issues of the Illinois State Register, a newspaper published in the City of Springfield, State of Illinois, 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 animal or animals that produced the fur 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 disclose the name of the country of origin of the imported furs contained in the fur products, in violation of Section 5(a)(6) of the Fur Products Labeling Act.

(c) 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.

(d) 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 respondents 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.

(e) Represented through the use of percentage savings claims such as "Save to 20% or more on any fur in stock" that the regular

or usual prices charged by respondents 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.

PAR. 5. Respondents in advertising fur products for sale as aforesaid made claims and representations respecting the prices and values of fur products. Respondents 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 the 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. Michael P. Hughes for the Commission.

Mr. A. Louis Oresman, by *Mr. David M. Levitan*, of New York, N. Y., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on November 28, 1960, charging the Respondents with violation of the Federal Trade Commission Act and of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, by falsely and deceptively advertising certain of their fur products, and by failing to maintain full and adequate records disclosing the facts upon which were based certain claims and representations respecting the prices and values of fur products.

Thereafter, on January 28, 1961, Respondents, their counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order To Cease And Desist, which was approved by the Director, Associate Director and Assistant Director of the Commission's Bureau of Litigation, and thereafter, on February 17, 1961, submitted to the Hearing Examiner for consideration.

The agreement identifies Respondents George L. Westenberger and Mary E. Westenberger II as individuals and copartners trading as Westenberger's, with their principal place of business located at 206 South Sixth Street, Springfield, Illinois.

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

Respondents waive any further procedure before the Hearing Examiner and the Commission; the making of findings of fact and conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree 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 order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, 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; that the complaint herein may be used in construing the terms of said order; and that the 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.

After consideration of the allegations of the complaint, and the provisions of the agreement and the proposed order, the Hearing Examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the Hearing Examiner accepts the Agreement Containing Consent Order To Cease And Desist; finds that the Commission has jurisdiction over the Respondents and over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That George L. Westerberger and Mary E. Westerberger II, individually and as copartners trading as Westerberger's 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 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 product" 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, representation, public announcement or notice which is intended to aid, promote or assist, directly or indirectly, in the sale, or the offering for sale of fur products and which:

- A. Fails to disclose:

- (1) The name or names of the animal or animals producing the fur or furs contained in the fur products as set forth in the Fur Products Name Guide and as prescribed under the Rules and Regulations;

(2) The name of the country of origin of any imported furs contained in a fur product;

B. Fails to set forth the information required under §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;

C. 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 Respondents have usually and customarily sold such products in the recent regular course of business;

D. Represents directly or by implication through percentage savings claims that the regular or usual price charged by Respondents 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;

2. Making pricing claims or representations 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 6th day of April 1961, become the decision of the Commission; and, accordingly:

It is ordered, That respondents George L. Westenberger and Mary E. Westenberger II, individually and as copartners trading as Westenberger's, 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.