

IN THE MATTER OF
BEN KAHN FURS CORP. ET AL.

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

Docket 8236. Complaint, Dec. 28, 1960—Decision, May 16, 1961

Consent order requiring New York City furriers to cease violating the Fur Products Labeling Act by setting forth fictitious prices on invoices; by failing in other respects to comply with invoicing and labeling requirements; and by furnishing false guaranties that certain of their furs were not misbranded, falsely invoiced, and falsely advertised.

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 Ben Kahn Furs Corp., a corporation, and Ben Kahn, Bernard Marson, Ernest Graf and Theodore Kahn, individually and as officers of said corporation, 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 proceed-

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ing 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. Ben Kahn Furs Corp. 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 150 West 30th Street, New York, New York.

Individual respondents Ben Kahn, Bernard Marson, Ernest Graf and Theodore Kahn are officers of the corporate respondent and control, direct and formulate the acts, practices and policies of the corporate respondent. Their office and principal place of business is the same as that of the 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, 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 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 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 that 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.

PAR. 5. 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. 6. Certain of said fur products were falsely and deceptively invoiced in that respondents set out on invoices certain prices of fur products which were in fact fictitious in violation of Section 5(b)(2) of the Fur Products Labeling Act.

PAR. 7. 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 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 4 of said Rules and Regulations.

PAR. 8. Respondents furnished false guaranties that certain of their fur products were not misbranded, falsely invoiced and falsely advertised when respondents in furnishing such guaranties had reason to believe that fur products so falsely guaranteed would be introduced, sold, transported or distributed, in commerce, in violation of Section 10(b) of 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. Charles W. O'Connell supporting the complaint.

Mr. Charles Goldberg, of New York, N. Y., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On December 28, 1960, the Federal Trade Commission issued a complaint charging the above-named respondents with misbranding and falsely and deceptively invoicing certain of their fur products in violation of the Federal Trade Commission Act and the Fur Products Labeling Act.

After issuance and service of the complaint the respondents, their attorney, and counsel supporting the complaint entered into an agreement for a consent order. The agreement has been approved by the Director, Associate Director and the Assistant Director of the Bureau of Litigation. The agreement disposes of the matters complained about.

The pertinent provisions of said agreement are as follows: Respondents admit all jurisdictional facts; the complaint may be used in construing the terms of the order; the order shall have the same force and effect as if entered after a full hearing and the said agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission; the record herein shall consist solely of the complaint and the agreement; respondents waive the requirement that the decision must contain a statement of findings of fact and conclu-

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sions of law; respondents waive further procedural steps before the hearing examiner and the Commission, and the order may be altered, modified, or set aside in the manner provided by statute for other orders; respondents waive any right to challenge or contest the validity of the order entered in accordance with the agreement and the signing of 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.

The undersigned hearing examiner having considered the agreement and proposed order, hereby accepts such agreement, makes the following jurisdictional findings, and issues the following order:

JURISDICTIONAL FINDINGS

1. Respondent Ben Kahn Furs Corp. 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 150 West 30th Street, New York, New York.

2. Respondents Ben Kahn, Bernard Marson, Ernest Graf and Theodore Kahn are officers of the corporate respondent and control, direct and formulate the acts, practices and policies of the corporate respondent. Their address is the same as that of the corporate respondent.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named and the proceeding is in the public interest.

ORDER

It is ordered, That Ben Kahn Furs Corp., a corporation, and its officers, and Ben Kahn, Bernard Marson, Ernest Graf and Theodore Kahn, individually and as officers of said corporation, 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 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 the information required to be disclosed

by each of the subsections of Section 4(2) of the Fur Products Labeling Act.

2. Setting forth on labels affixed to fur products information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder mingled with non-required information.

B. Falsely or deceptively invoicing fur products by:

1. Failing to furnish to purchasers of fur products invoices showing all 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 information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form.

3. Representing, directly or by implication, on invoices that the former, regular or usual prices of any fur product is any amount which is in excess of the price at which respondents have formerly, usually or customarily sold such products in the recent regular course of business.

C. Furnishing a false guaranty that any fur or fur product is not misbranded, falsely invoiced, or falsely advertised when the respondents have reason to believe that such fur or fur product may be introduced, sold, transported or distributed in commerce.

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 16th day of May 1961, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents herein 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.