

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 respondent herein 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.

IN THE MATTER OF

EINBENDER'S INC., ET AL.

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

Docket 8192. Complaint, Nov. 28, 1960—Decision, May 17, 1961

Consent order requiring furriers in St. Joseph, Mo., to cease violating the Fur Products Labeling Act by affixing to fur products labels bearing fictitious prices, represented thereby as the regular retail selling prices; by advertising in newspapers which failed to disclose that certain fur products were composed of flanks, and, by use of such terms as "Values to", represented falsely that the following excessive figure was their usual retail price, and failed in other respects to comply with advertising requirements; and by failing to keep adequate records as a basis for pricing and value 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 Einbender's Inc., a corporation, and Sylvia B. Einbender, Lester L. Einbender and Edwin I. Einbender, 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 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. Einbender's Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State

of Missouri with its office and principal place of business located at 502 Felix Street, St. Joseph, Missouri.

Individual respondents Sylvia B. Einbender, Lester L. Einbender and Edwin I. Einbender are officers of said corporate respondent and 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 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 misbranded in that labels affixed thereto contained fictitious prices and misrepresented the regular retail selling prices of such fur products in that the prices represented on such labels as the regular prices of the fur products were in excess of the retail prices at which the respondents usually and regularly sold such fur products in the recent regular course of their business, in violation of Section 4(1) of the Fur Products Labeling Act.

PAR. 4. 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 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. 5. Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondents which appeared in issues of St. Joseph, Missouri News Press, a newspaper published in the City of St. Joseph, State of Missouri, 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) Contained information required under Section 5(a) of the Fur Products Labeling Act and Rules and Regulations promulgated thereunder in abbreviated form in violation of Rule 4 of said Rules and Regulations.

(b) Failed to disclose that fur products were composed in whole or in substantial part of flanks when such is the fact in violation of Rule 20 of said Rules and Regulations.

(c) Failed 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 in violation of Rule 38(a) of said Rules and Regulations.

PAR. 6. In advertising fur products for sale as aforesaid respondents falsely and deceptively advertised said fur products in violation of Section 5(a)(5) of the Fur Products Labeling Act and Rule 44(a) of the said Rules and Regulations, by representing, directly or by implication, through such statements as "40th Anniversary Sale—Mink Stoles \$99.40—Values to \$195.00", that respondents had reduced their price of mink stoles to the advertised lower sale price; that the higher price designated by the term "Values to" was respondents' regular and usual price for the mink stole thus advertised; and that a purchase at the advertised lower sale price would result in a saving to the purchaser of the difference between the advertised lower sale price and the advertised higher price designated by the term "Values to".

In truth and in fact, the advertised higher price designated by the term "Values to" was not respondents' regular or usual price for the mink stoles thus advertised but was in excess of the regular or usual price charged by respondents for such mink stoles; therefore, a purchase of a mink stole at the advertised lower sale price would not result in a saving to the purchaser of the difference between the advertised lower sale price and the advertised higher price designated by the term "Values to".

PAR. 7. 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. 8. 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

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and deceptive acts and practices in commerce under the Federal Trade Commission Act.

Mr. William A. Somers, supporting the complaint.

Morison, Murphy, Clapp & Abrams by *Mr. Samuel K. Abrams* of Washington, D.C., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On November 28, 1960, the Federal Trade Commission issued a complaint charging the above-named respondents with misbranding and falsely and deceptively advertising 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 attorneys, and counsel supporting the complaint entered into an agreement for a consent order. The agreement states, among other things, that Edwin I. Einbender is an administrative officer and had nothing to do with the acts and practices involved in this proceeding. This fact is set out in an affidavit executed by Edwin I. Einbender, which is attached to and made a part of the agreement. Accordingly, the term "respondents", as hereinafter used, does not include Edwin I. Einbender in his individual capacity.

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 conclusions 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 Einbender's Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri with its office and principal place of business located at 502 Felix Street, St. Joseph, Missouri.

2. Individual respondents Sylvia B. Einbender, Lester L. Einbender and Edwin I. Einbender are officers of said corporate respondent. Their office and principal place of business is the same as that of the said 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 Einbender's Inc., a corporation, and its officers, and Sylvia B. Einbender and Lester L. Einbender, individually and as officers of said corporation, and Edwin I. Einbender, as an officer of said corporation, 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 any 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 falsely or deceptively labeling or otherwise identifying such products as to the regular prices thereof by any representation that the regular or usual prices of such products are any amount in excess of the prices at which respondents have usually and customarily sold such products in the recent regular course of business.

2. 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. Sets forth information required under Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form.

B. Fails to disclose that fur products are composed in whole or in substantial part of flanks, when such is the fact.

C. 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.

D. Represents directly or by implication through the use of the term "Values to" or any other words or terms of similar import or meaning, that the regular or usual price of any fur product is any amount which is in excess of the price at which the respondents have usually and customarily sold such products in the recent regular course of business.

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

3. Making pricing claims or representations respecting prices or values of fur products unless there are maintained full and adequate records disclosing the facts upon which such claims and representations are based.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to Edwin I. Einbender, individually but not as an officer of said corporation.

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 17th day of May 1961, become the decision of the Commission; and, accordingly:

It is ordered, That respondents, Einbender's Inc., a corporation; Edwin I. Einbender, as an officer of said corporation; and Sylvia B. Einbender and Lester L. Einbender, individually and as officers of said corporation, shall within sixty 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.