MADAME E ET AL.

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

Docket 8388. Complaint, May 5, 1961—Decision, Sept. 6, 1961

Consent order requiring a New York City furrier to cease violating the Fur Products Labeling Act by failing to set forth the term "Secondhand" on invoices where required, and by failing in other respects to comply with 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 Madame E, a corporation, and Jacques Kaplan,

individually and as officer 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. Respondent Madame E 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 place of business located at 1207 Lexington Avenue, New York, New York.

Respondent Jacques Kaplan, is an officer of said corporation. He controls, formulates and directs the acts and practices of the corporate respondent, including the acts and practices hereinafter referred to. His address is the same as that of the corporate respondent.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act of 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 products" 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 the following respects:

(a) Information required under Section 4(2) 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.

(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) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth in the required sequence, in violation of Rule 30 of said Rules and Regulations.

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 the following respects:

(a) 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.

(b) Information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth separately on invoices with respect to the disclosure "Secondhand", in violation of Rule 23 of said Rules and Regulations.

(c) Information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth separately on invoices with respect to each section of fur products composed of two or more sections containing different animal furs, in violation of Rule 36 of said Rules and Regulations.

PAR. 7. 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. Arthur Wolter, Jr., supporting the complaint.

Respondents, *pro se*.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

On May 5, 1961, the Federal Trade Commission issued a complaint against respondents Madame E, a corporation, and Jacques Kaplan, individually and as officer of said corporation, in which they were charged with violating the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations promul-

gated thereunder by falsely and deceptively labeling and invoicing fur products sold by respondents in interstate commerce. A true and correct copy of the complaint was served upon respondents as required by law. Thereafter respondents agreed to dispose of this proceeding without a formal hearing pursuant to the terms of an agreement dated June 20, 1961, containing consent order to cease and desist. Respondent Jacques Kaplan signed the agreement as Jacques M. Kaplan, as attested to by an affidavit attached to and made a part of the agreement. The agreement was submitted to the undersigned hearing examiner on July 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 the respondents 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 counsel supporting the complaint, and has been approved by the Assistant Director and the 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 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 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 June 20, 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 Madame E 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 1207 Lexington Avenue, in the City of New York, State of New York.

3. Individual respondent Jacques Kaplan is an officer of said corporation. His address is the same as that of the corporate respondent.

4. Respondent is 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 Madame E, a corporation, and its officers, and Jacques Kaplan, individually and 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 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. 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;

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

(1) In abbreviated form;

(2) Mingled with non-required information;

(3) In handwriting;

(4) Not in the required sequence.

2. Falsely or deceptively invoicing fur products by:

A. Failing to furnish invoices to purchasers of fur products showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act;

B. Setting forth on invoices under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder required information:

(1) In abbreviated form;

(2) Incompletely and not separately with respect to the required disclosure "Second hand."

(3) Incompletely with respect to each section of fur products composed of two or more sections containing different animal furs.

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 September 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

LARRY LEVINE, INC., ET AL.