

Complaint

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in detail the manner and form in which it has complied with the order to cease and desist.

SEPTEMBER 28, 1961.

IN THE MATTER OF
GENERAL FOODS CORPORATION ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 8198. Complaint, Nov. 30, 1960—Decision, Sept. 28, 1961

Consent order requiring five companies—which together imported 75 per cent of all the Philippine desiccated coconut imported into the United States, processed sweetened coconut, and sold the product to bakeries, candy and confection manufacturers, ice cream makers, and others—to cease carrying out their agreements to fix and maintain identical F. O. B. port of entry base prices for all types of Philippine coconut imported, and identical base prices for all types of sweetened coconut sold in the United States; to maintain a system of price differentials composed of freight and handling and storage charges at specified warehouse distribution points to be applied to the aforesaid base prices; to eliminate free delivery and allowances for such services from port of entry, warehouse distribution point, or other selling location; to maintain a price leadership plan whereby General Foods generally announced changes in prices and other selling factors; to hold meetings for the exchange of confidential price information; and to eliminate competition by restricting sources of supply of competing processors, effectuating price squeezes between Philippine desiccated and sweetened coconut, and other unfair practices.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondents named in the caption hereof and hereinafter more particularly designated and described, have violated and are now violating the provisions of Section 5 of the Federal Trade Commission Act (U.S.C. Title 15, Section 45) and it appearing to the Commission that a proceeding by it in respect thereof would be to the interest of the public, hereby issues its complaint pursuant to its authority thereunder and charging as follows:

PARAGRAPH 1. Respondent General Foods Corporation, hereinafter referred to as General Foods, is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 250 North Street, White Plains, New York.

Respondent The Glidden Company, hereinafter referred to as Glidden, is a corporation organized and existing under the laws of the State of Ohio, with its principal office and place of business located at 900 Union Commerce Building, Cleveland, Ohio.

Respondent Calvert, Vavas seur & Company, Inc., hereinafter referred to as Calvert-Vavas seur, is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 19 Rector Street, New York, New York.

Calvert-Vavas seur is a subsidiary of J. H. Vavas seur & Company, Ltd., London, England, and acts as a selling agent in the United States for two other subsidiaries of J. H. Vavas seur & Company, Ltd., Red V Coconut Products, Ltd., Manila, Philippine Islands and Red V Coconut Products Company, Inc., which latter corporation is also named as a respondent herein. Calvert-Vavas seur engages in the desiccated and sweetened coconut business in the United States through another subsidiary of J. H. Vavas seur & Company, Ltd., Wood & Selick Coconut Company, Inc., which is also named as a respondent herein.

Respondent Red V Coconut Products Company, Inc., hereinafter referred to as Red V, is a corporation organized and existing under the laws of the State of New Jersey, with its principal office and place of business located at 19 Rector Street, New York, New York.

Respondent Wood & Selick Coconut Company, Inc., hereinafter referred to as Wood & Selick, is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 19 Rector Street, New York, New York.

PAR. 2. The respondents hereinbefore named and described, either directly or indirectly through subsidiary or affiliated corporations, or operating divisions or units, are engaged in the importation, sale and distribution of Philippine desiccated coconut, and in the processing, sale and distribution, or sale and distribution of sweetened coconut. Each respondent imports, sells and distributes Philippine desiccated coconut in the United States to customers located in States other than the State in which each respondent respectively imports and receives said coconut. Each of the respondents is also engaged in the business of selling and distributing sweetened coconut in the United States to customers located in States other than the State where said sweetened coconut is processed and produced. There has been and is now a constant and continuous current and flow of trade and commerce in Philippine desiccated coconut and sweetened coconut by respondents in commerce within the intent and meaning of the Federal Trade Commission Act.

PAR. 3. Each of the respondents is in substantial competition with each and all of the other respondents named herein and with other importers and sellers of desiccated coconut and other processors and sellers of sweetened coconut in the importation, sale and distribution of desiccated coconut and in the sale and distribution of sweetened

coconut in interstate commerce, except to the extent that competition has been hindered, lessened, restricted and eliminated by the unfair methods of competition and unfair acts and practices hereinafter alleged.

PAR. 4. The desiccated coconut involved herein is produced and processed in and is exported to the United States from the Philippine Islands. It is known in the trade as Philippine desiccated coconut. The production and processing of said coconut involves the purchase of nuts from local Philippine producers; shelling and recovery of the meat from the fresh coconuts; dehydration and removal of substantially all moisture from the coconut meat, while retaining the natural oils therein; and the fine division of the coconut meat by shredding, grating, cutting and grinding into various types or cuts for commercial use such as, extra fine, macaroon, medium cut, coarse cut, rice cut, long shred, short shred, flake, fancy shred, long thread, slice, chip (regular, short or broken) and strip coconut. These are the types or cuts of desiccated coconut commonly purchased and used by bakeries, candy and confection manufacturers, ice cream makers and other buyers and users. Each of these types or cuts of desiccated coconut are customarily individually priced and each is generally packed and shipped from the Philippines in 100 pound bags which is the minimum quantity in which said coconut is normally and usually sold and distributed in the United States.

Desiccated coconut is the basic raw material from which sweetened coconut, the other type of coconut involved herein, is domestically processed and produced. The domestic production and processing of sweetened coconut involves the unpacking, softening, moistening, and fluffing of the various types or cuts of desiccated coconut and the addition thereto of sweetening agents and mold inhibitors to produce various types or cuts of sweetened coconut. The various types or cuts of sweetened coconut are customarily individually priced, and each is generally packed, sold and distributed in 10, 25 and 50 pound cartons, bags, and tins and in drums of more than 100 pounds to bakeries, candy and confection manufacturers, ice cream makers and other buyers and users. Sweetened coconut is also packed, sold and distributed in smaller consumer size packages and containers for retail sale for household use. Desiccated and sweetened coconut are also used in producing toasted and creamed coconut and which are additional forms of sweetened or domestically processed coconut.

PAR. 5. The Philippine Islands supply practically all of the desiccated coconut imported, sold and distributed commercially in the United States. In 1958 total desiccated coconut imports into the United States amounted to 99,704,781 pounds, valued at \$14,349,832.

of which 98,361,868 pounds, valued at \$14,195,960, or more than 98 percent on a quantity and value basis, were imported from the Philippine Islands.

PAR. 6. For a number of years, respondent General Foods, through its foreign subsidiary, Franklin Baker Company of the Philippines, and respondent Calvert-Vavasseur, through its Philippine affiliate, Red V Coconut Products, Ltd., have produced, processed and exported from the Philippine Islands approximately 75 percent of all Philippine desiccated coconut imported, sold and distributed commercially in the United States.

Red V Coconut Products, Ltd., is a contract supplier of desiccated coconut to respondent Glidden, and for a number of years has supplied Glidden's total requirements of Philippine desiccated coconut.

PAR. 7. Respondent General Foods engages in the importation, sale and distribution of Philippine desiccated coconut, and in the processing, sale and distribution of sweetened coconut, through its operating unit, Franklin Baker. A substantial part of the Philippine desiccated coconut imported by General Foods is shipped to its coconut processing plant at Hoboken, New Jersey, to be used in producing sweetened coconut. General Foods, through its Franklin Baker operating unit is the largest importer and seller of Philippine desiccated coconut and also the largest processor and seller of sweetened coconut in the United States.

Respondent Glidden engages in the importation, sale and distribution of Philippine desiccated coconut, and in the processing, sale and distribution of sweetened coconut, through its operating division, Durkee Famous Foods. For a number of years, Glidden has purchased and imported its total requirements of Philippine desiccated coconut on a contract basis from Red V Coconut Products, Ltd., an affiliated corporation of respondent Calvert-Vavasseur. Glidden, through its Durkee Famous Foods Division, operates a coconut processing plant at Bethlehem, Pennsylvania, which supplies its total requirements of sweetened coconut. This plant also produces and supplies on a contract basis the total sweetened coconut requirements of respondent Calvert-Vavasseur.

Respondent Calvert-Vavasseur, through respondent Red V, imports Philippine desiccated coconut from Red V Coconut Products, Ltd., and engages in the domestic sale and distribution of Philippine desiccated coconut and sweetened coconut through respondent Wood & Selick. Calvert-Vavasseur operates no facilities for producing sweetened coconut and procures its total requirements of said product on a contract basis from respondent Glidden.

Respondent Red V operates for respondent Calvert-Vavasseur as an importer of Philippine desiccated coconut from Red V Coconut Products, Ltd.

Respondent Wood & Selick operates as a sales agency for respondent Calvert-Vavasseur in the domestic sale and distribution of Philippine desiccated and sweetened coconut.

PAR. 8. The desiccated coconut industry in the United States is composed of respondents, two other importers and sellers of Philippine desiccated, and a number of other competing companies that purchase Philippine desiccated coconut from respondents and the other two importers, and process it into sweetened coconut. These other domestic coconut processors sell and distribute desiccated and sweetened coconut in competition with respondents, and are dependent upon respondents for a substantial part of their Philippine desiccated coconut requirements, as the respondents collectively import and sell approximately 75 percent of all Philippine desiccated coconut imported and sold commercially in the United States.

PAR. 9. Each and all of the respondents, either directly or indirectly through subsidiary or affiliated corporations or operating divisions or units, acting between and among themselves, for a number of years last past and continuing to the present time, have maintained and now maintain and have in effect a conspiracy, combination, agreement and understanding to pursue, and they have pursued, a planned common course of action between and among themselves to adopt and adhere to certain practices and policies which hinder, lessen, restrict, restrain, suppress and eliminate competition in the importation, processing, sale and distribution of Philippine desiccated coconut and sweetened coconut in commerce, in violation of Section 5 of the Federal Trade Commission Act.

PAR. 10. Pursuant to and in furtherance of said conspiracy, combination, agreement, understanding and planned common course of action, each and all of the respondents, either directly or indirectly through subsidiary or affiliated corporations or operating divisions or units, acting between and among themselves, for a number of years last past and continuing to the present time, have engaged in and carried out by various methods and means the following acts, practices, systems and policies, among others:

(a) Agreed to fix, stabilize and maintain, and have fixed, stabilized and maintained, uniformly identical F.O.B. port of entry base prices and price schedules for all types or cuts of Philippine desiccated coconut imported, sold and distributed by respondents in the United States.

(b) Agreed to adopt, maintain and use, and revise from time to time, and have adopted, maintained and used, and revised from time

to time, a system of established price differentials, composed of freight to and handling and storage charges at specified warehouse distribution points throughout the country, which each of the respondents by agreement applies to the fixed and stabilized uniformly identical F.O.B. port of entry base prices and price schedules for Philippine desiccated coconut, in calculating, determining and establishing uniformly identical prices and terms of delivery on all types or cuts of Philippine desiccated coconut sold and delivered anywhere in the United States.

(c) Agreed to fix, stabilize and maintain, and have fixed, stabilized and maintained, uniformly identical base prices and price schedules for all types or cuts of sweetened coconut processed, sold and delivered by respondents anywhere in the United States.

(d) Agreed to adopt, maintain and use, and revise from time to time, and have adopted, maintained and used, and revised from time to time, a system of established price differentials, composed of freight to and handling and storage charges at specified warehouse distribution points throughout the country, which each of the respondents by agreement applies to the fixed and stabilized base prices and price schedules for sweetened coconut, in calculating, determining and establishing uniformly identical prices and terms of delivery on all types or cuts of sweetened coconut sold and delivered anywhere in the United States.

(e) Agreed to eliminate and refuse to grant, and have eliminated and refused to grant, free delivery, cartage or drayage, or any allowances for such services, on sales of Philippine desiccated coconut or sweetened coconut to any buyers from any port of entry, warehouse distribution point, or any other location from which said products are sold and distributed by respondents.

(f) Agreed to adopt, and have adopted, maintained and continued in effect, a price leadership plan whereby respondent General Foods generally leads in the announcement of Philippine desiccated coconut and sweetened coconut price increases and decreases, as well as in the announcement of changes in all other factors or practices which affect the selling, handling or delivery of said products, such as, but not limited to, price differentials and warehouse distribution points, allowances, terms and conditions of sale and delivery, price protection policies, booking periods and product classifications and other changes. Thereafter, the other respondents, by agreement, follow in the adoption, announcement and use of the identical prices, price differentials and warehouse distribution points and other pricing factors or practices in selling and distributing said products.

(g) Representatives of the respondents have met informally and have communicated, and continue to meet and communicate from time

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to time, between and among themselves and have filed and exchanged, and continue to file and exchange, with each other, through personal contact, correspondence, telegraph, telephone and otherwise, confidential and other information concerning past, present and future base prices and price schedules, price differentials and warehouse distribution points, terms and conditions of sale and delivery, and other factors, which have been, now are, or are to be, adopted and used, by the respondents in dealing with purchasers or prospective purchasers of Philippine desiccated coconut and sweetened coconut. Through and by means of such acts, practices, and methods, the respondents keep informed and have a common understanding of the base prices and price schedules, price differentials and warehouse distribution points and other pricing factors and policies to be used, and which have been used, by each of the respondents in the importation, sale and distribution of Philippine desiccated coconut and in the processing, sale and distribution of sweetened coconut.

(h) Attempted to monopolize and to a substantial extent have dominated and controlled the importation, sale and distribution of Philippine desiccated coconut in the United States.

(i) Attempted to monopolize the processing, sale and distribution of sweetened coconut in the United States and to inhibit, restrict or eliminate competition from other domestic coconut processors:

(1) By restricting the sources of supply of Philippine desiccated coconut available to said competing processors by said respondents refusing to sell, selling only on a limited basis, or imposing unreasonable terms and conditions in selling Philippine desiccated coconut to said competing processors;

(2) By effectuating, on occasion, a price squeeze between Philippine desiccated and sweetened coconut. This is accomplished by the fixed or stabilized prices of desiccated coconut being increased, as hereinbefore alleged, and said respondents not increasing proportionately their fixed or stabilized prices for sweetened coconut. By means of such manipulation and control of prices, said respondents have an effective method of regulating and controlling to a considerable extent the operations of competing domestic coconut processors.

PAR. 11. The conspiracy, combination, agreement, understanding and planned common course of action, and the acts, practices, methods and policies of the respondents, as hereinbefore alleged, all and singularly, are unfair and to the prejudice of the public; deprive the public of the benefits of competition in the sale of Philippine desiccated and sweetened coconut; prevent price competition between and among respondents in the sale of said products; deprive purchasers of said products of the benefits of competition in price; have restricted and limited sources of supply of Philippine desiccated coconut to

competing domestic processors of sweetened coconut; have resulted in the prices of said products being manipulated so as to foreclose and eliminate competition from competing domestic coconut processors; have resulted in the respondents dominating and controlling the importation and sale of Philippine desiccated coconut; have constituted an attempt to monopolize the domestic processing and selling of sweetened coconut; have a capacity and tendency to hinder, frustrate, suppress and eliminate, and have actually hindered, frustrated, suppressed and eliminated, competition in the sale of Philippine desiccated and sweetened coconut in commerce; have a tendency and capacity to restrain unreasonably, and have restrained unreasonably, commerce in said products; have a tendency and capacity to create a monopoly in respondents in the importation, sale and distribution of Philippine desiccated coconut and in the processing, sale and distribution of sweetened coconut; and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning and in violation of Section 5 of the Federal Trade Commission Act.

Mr. William J. Boyd, Jr., for the Commission;

Sullivan & Cromwell, by *Mr. John F. Dooling, Jr.*, of New York, N.Y., for respondent General Foods Corporation; *Mr. William P. Smith* of Washington, D.C., for respondent The Glidden Company; and *Mr. Jay I. Julien*, of New York, N.Y., for respondents Calvert, Vavasour & Company, Inc., Red V Coconut Products Company, Inc., and Wood & Selick Coconut Company, Inc.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on November 30, 1960, issued its complaint herein, charging the above-named respondents with having violated the provisions of Section 5 of the Federal Trade Commission Act (U.S.C. Title 15, Section 45) in certain particulars, and the respondents were duly served with process.

On August 3, 1961, there was submitted to the undersigned hearing examiner of the Commission, for his consideration and approval, an "Agreement Containing Consent Order To Cease And Desist", which had been entered into by and between respondents and counsel for all parties, under date of August 2, 1964, subject to the approval of the Bureau of Restraint of Trade of the Commission, which had subsequently duly approved the same.

On due consideration of such agreement, the hearing examiner finds that said agreement, both in form and in content, is in accord with § 3.25 of the Commission's Rules of Practice for Adjudicative Pro-

ceedings, and that by said agreement the parties have specifically agreed to the following matters:

1. A. Respondent General Foods Corporation is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 250 North Street, White Plains, New York.

B. Respondent The Glidden Company, hereinafter referred to as Glidden, is a corporation organized and existing under the laws of the State of Ohio, with its principal office and place of business located at 900 Union Commerce Building, Cleveland, Ohio.

C. (1) Respondent Calvert, Vavas seur & Company, Inc., hereinafter referred to as Calvert-Vavas seur, is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 19 Rector Street, New York, New York;

(2) Respondent Red V Coconut Products Company, Inc., hereinafter referred to as Red V, is a corporation organized and existing under the laws of the State of New Jersey, with its principal office and place of business located at 19 Rector Street, New York, New York;

(3) Respondent Wood & Selick Coconut Company, Inc., hereinafter referred to as Wood & Selick, is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 19 Rector Street, New York, New York;

(4) Respondents Calvert-Vavas seur, Red V and Wood & Selick are subsidiaries of, and controlled by, J. H. Vavas seur & Company, Ltd., London, England (not a respondent herein). None of these respondents competes one with the other in selling or offering to sell Philippine desiccated and sweetened coconut, the products involved herein. For purposes of the agreement and order, said respondents shall be considered and treated as a single respondent.

D. (1) Respondent Glidden purchases from others, including Red V Coconut Products Ltd., Manila, Philippine Islands, its entire requirements of Philippine desiccated coconut;

(2) Respondent Wood & Selick has its sweetened coconut processed for it by Glidden.

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

3. This agreement disposes of all of this proceeding as to all parties.

4. 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 of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

5. The record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement.

6. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

7. This 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.

8. The following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondents. When so entered, it shall have the same force and effect as if entered after a full hearing. It 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.

Upon due consideration of the complaint filed herein and the said "Agreement Containing Consent Order To Cease And Desist", the hearing examiner approves and accepts this agreement; finds that the Commission has jurisdiction of the subject matter of this proceeding and of the respondents herein; that the complaint states a legal cause for complaint under the Federal Trade Commission Act, against the respondents, both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; that the order proposed in said agreement is appropriate for the just disposition of all the issues in this proceeding as to all of the parties hereto; and that said order therefore should be, and hereby is, entered as follows:

It is ordered, That respondents General Foods Corporation, The Glidden Company, Calvert, Vavasseur & Company, Inc., Red V Coconut Products Company, Inc., and Wood & Selick Coconut Company, Inc., corporations (the three last named corporations being considered and treated as a single respondent), their respective officers, agents, representatives and employees, directly or through any corporate or other device, in or in connection with the importation, offering for sale, sale or distribution of Philippine desiccated coconut or sweetened coconut, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned

common course of action, understanding, agreement, combination, or conspiracy between or among any two or more of said respondents, or between any one or more of said respondents and others not parties hereto, to do or perform any of the following acts or practices:

1. Fix, maintain, stabilize or adhere to any prices, terms or conditions of sale or delivery for said products;

2. Adopt, use or maintain any system, employing established base prices or price differentials in calculating or determining prices, terms or conditions of sale for said products, to fix, maintain or stabilize, or where the intent or purpose is to fix, maintain or stabilize, anywhere in the United States, prices, terms or conditions of sale or delivery for said products;

3. Communicate or exchange information relating to present or future prices, terms or conditions of sale or delivery of said products anywhere in the United States to fix, maintain or stabilize, or where the intent or purpose of same is to fix, maintain or stabilize, the prices, terms, or conditions of sale or delivery for said products;

4. Inhibit, restrict or limit independent domestic processors of said products in selling said products;

5. Engage in any acts or practices to effectuate or perpetuate, or for the purpose or with the intent of effectuating or perpetuating, any of the acts or practices prohibited herein;

Provided, however, Nothing herein contained shall be construed or interpreted as prohibiting any single respondent, or subsidiary thereof, from buying, selling, processing or having processed, said products, or from communicating, negotiating, or contracting relative thereto, where the effect of same is not inconsistent with any of the prohibitions of this order.

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 28th 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.

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IN THE MATTER OF

NEIMAN-MARCUS COMPANY

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

Docket 8249. Complaint, Dec. 28, 1960—Decision, Sept. 28, 1961

Consent order requiring a Dallas, Tex., department store to cease violating the Fur Products Labeling Act by advertising fictitious amounts as the usual prices for fur products in newspapers, through use of the term "comparable value" or the word "originally" with a larger figure followed by a purportedly reduced sale price; by representing prices falsely as "40% off" and "reductions . . . ¼ to ½ off"; 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 Neiman-Marcus Company, a corporation, hereinafter referred to as respondent, has 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. Neiman-Marcus Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas with its office and principal place of business located at Main and Ervay Streets, Dallas, Texas. It does business under the name of Neiman-Marcus.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondent has been and is 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 has 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 respondent caused the dissemination in commerce, as "commerce" is defined in said Act, of certain newspaper advertisements, concerning