

Complaint

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

Complaint

59 F.T.C.

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 respondent which appeared in the January 18, 1960 and February 3, 1960 issues of the Dallas Morning News, a newspaper published in Dallas, Texas, 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, respondent falsely and deceptively advertised fur products in that said advertisements:

(a) Represented, directly or by implication, through such statements as "An N-M Coup! Special purchase sale" * * * "40% off on N-M Mink jackets and coats" * * * "because when we say sale, we mean sale, and our prominent position in the fur world commands the greatest values the market has to offer" followed by two columns of figures, the one column containing a higher price and designated by the term "comparable value" and the other column containing a lower price and designated by the term "now", that the higher prices designated by the term "comparable value" were respondent's regular and usual prices for the mink products in the recent regular course of business, and that purchases at the lower prices would result in savings of the differences between the higher prices and the lower prices.

In truth and in fact, the higher prices designated by the term "comparable value" were not respondent's regular or usual prices in the recent regular course of business for the products advertised, but were fictitious prices, and the purchase of said products at the lower prices would not result in savings to purchasers of the differences between the higher prices and the lower prices, all in violation of Section 5(a)(5) of the Fur Products Labeling Act and Rule 44(a) of said Rules and Regulations.

(b) Represented, directly or by implication, through such terms as "further reductions in our fur sale $\frac{1}{3}$ to $\frac{1}{2}$ off" followed by two columns of figures, the one column containing a higher price and designated by the term "originally" and the other column containing a lower price and designated by the term "now", that respondent's regular or usual prices had been reduced when such was not the fact, in violation of Section 5(a)(5) of the Fur Products Labeling Act and Rule 44(a) of said Rules and Regulations.

(c) Represented, directly or by implication, through the use of percentage savings claims such as "40% off on N-M Mink jackets and

coats" and "further reductions in our fur sale! $\frac{1}{3}$ to $\frac{1}{2}$ off", that respondent's regular or usual prices of fur products 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. Respondent in advertising fur products for sale as aforesaid made claims and representations respecting the prices and values of fur products. Respondent 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 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. Charles W. O'Connell for the Commission.
Arnold, Fortas & Porter, by *Mr. Norman Diamond*, Washington, D.C.,
for respondents.

INITIAL DECISION BY HERMAN TOCKER, HEARING EXAMINER

The respondent, Neiman-Marcus Company, is a corporation organized under the laws of the State of Texas and has its office and principal place of business at Main and Ervay Streets, Dallas, Texas.

In a complaint issued December 28, 1960, the Federal Trade Commission charged that the respondent had violated both the Federal Trade Commission Act and the Fur Products Labeling Act by misrepresenting that prices at which it advertised fur products for sale in commerce would result in savings to customers and by failing to maintain records of the facts upon which such claims were based.

On August 2, 1961, the respondent (by and with the advice of its attorneys) entered into an agreement with counsel supporting the complaint wherein it is provided, in accordance with Section 3.25 of the Rules of Practice applicable to this case, for the entry of a consent order to cease and desist. The proposed order would dispose of all the issues herein.

In the agreement it is expressly provided that the signing thereof is for settlement purposes only and does not constitute an admission by the respondent that it has violated the law as in the complaint alleged.

By the terms of the agreement, the respondent admits all the jurisdictional facts alleged in the complaint and agrees that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with the allegations.

Order

59 F.T.C.

By the agreement, the respondent expressly waives any further procedural steps before the Hearing Examiner and the Commission, the making of findings of fact or conclusions of law, and all rights it may have to challenge or contest the validity of the order to cease and desist to be entered in accordance therewith.

Respondent further agrees that the order to cease and desist, to be issued in accordance with the agreement, shall have the same force and effect as if made after a full hearing.

It is further provided in said agreement that the same, together with the complaint, shall constitute the entire record herein and that the complaint herein may be used in construing the terms of the order to be issued pursuant to said agreement and that such order may be altered, modified or set aside in the manner prescribed by the statute for orders of the Commission.

The Hearing Examiner has considered the agreement and the order therein contained, and, it appearing that said agreement and order provide for an appropriate disposition of this proceeding, the same is hereby accepted and shall be filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice.

Now, in consonance with the terms thereof, the Hearing Examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent named herein, and that this proceeding is in the interest of the public, and issues the following order:

ORDER

It is ordered, That Neiman-Marcus Company, a corporation, and its officers, and respondent's 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 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:

A. 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:

1. Represents, directly or by implication, that any price is respondent's usual retail price when it is in excess of the price at which the merchandise has been usually and customarily sold by respondent at retail in the recent regular course of business.

2. Represents, directly or by implication, that the price at which respondent offers fur products affords a savings to consumers unless such representation is true and the basis of such representation is truthfully stated.

3. Uses the term "originally" to designate prices unless they are the prices at which the merchandise has been usually and customarily sold by respondent in the recent, regular course of business.

4. Designates prices of fur products by the term "comparable value", or any other term of the same import, in connection with lower prices, in such manner as to represent that the prices so designated are respondent's usual and customary retail selling prices in the recent, regular course of business, unless they are such in fact.

5. Represents, directly or by implication, through percentage savings claims that the prices at which respondent had usually and customarily sold 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.

B. Making price claims or representations respecting prices or values of fur products unless respondent maintains full and adequate records disclosing the facts upon which such claims or 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, published May 6, 1955, as amended, 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 respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist.

Complaint

59 F.T.C.

IN THE MATTER OF

PERL PILLOW COMPANY

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

Docket 8308. Complaint, Mar. 6, 1961—Decision, Sept. 28, 1961

Consent order requiring, Houston, Tex., manufacturers to cease such practices as labeling their "Countess" pillows as "All New Material Consisting of Imported White Goose Down" when they actually contained substantial quantities of other material.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that Perl Pillow Company, a corporation, and Jack Perlman, Martin Perlman, Maurice Dubinski and Joseph Arena, individually and as officers of the said corporation, hereinafter referred to as respondents, have violated the provisions of said 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 Perl Pillow 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 2120 Rothwell Street, Houston, Texas. Respondents Jack Perlman, Martin Perlman, Maurice Dubinski and Joseph Arena are the officers of the corporate respondent. Their address is the same as that of the corporate respondent. Those individuals direct and control the policies, acts and practices of the corporate respondent, including the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for more than one year last past have been, engaged in the manufacture and sale of feather and down pillows to dealers for resale to the consuming public. Respondents have caused and now cause their said products, when sold, to be transported from their place of business in the State of Texas to purchasers thereof located in other States of the United States. Respondents maintain, and at all times mentioned herein have maintained a course of trade in said feather and down products, in commerce, among and between the various States of the United States.

PAR. 3. In the course and conduct of their aforesaid business respondents are now, and have been, in substantial competition in com-