

in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF
E. GOTTSCHALK & CO., INC., ET AL.

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

Docket 8301. Complaint, Mar. 3, 1961—Decision, Oct. 24, 1961

Consent order requiring a Fresno, Calif., furrier to cease violating the Fur Products Labeling Act by using the word "blended" improperly on labels on fur products; by representing falsely on invoices that certain mink was from the Aleutian Islands; by advertising in newspapers which failed to disclose the names of animals producing the fur in fur products, falsely represented the volume of merchandise offered for sale to be \$200,000 worth of precious furs when it was substantially less and that savings could be effected in its "January Fur Sale"; by failing to keep adequate records as a basis for price and value claims; and by failing in other respects to comply with labeling and invoicing requirements.

Complaint

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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 E. Gottschalk & Co., Inc., a corporation, and Joseph W. Levy, individually and as an 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 E. Gottschalk & Co., Inc. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of California with its office and principal place of business located at Fulton and Kearn Streets, Fresno, California.

Respondent Joseph W. Levy is vice president and secretary of the said corporate respondent and controls, directs and formulates the acts, practices and policies of the said corporate respondent. His 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 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) The term "blended" was used as part of the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe the pointing, bleaching, dyeing or tip-dyeing of furs, in violation of Rule 19(a) 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 not set forth in the required sequence, in violation of Rule 30 of said Rules and Regulations.

PAR. 4. 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. 5. Certain of said fur products were falsely and deceptively invoiced in that said invoices connoted a false geographic origin of Mink by representing that such Mink was from the Aleutian Islands when such was not the fact in violation of Section 5(b)(2) of the Fur Products Labeling Act and Rule 7 of the said Rules and Regulations.

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 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. 7. 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 newspaper 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. 8. Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondents which appeared in issues of the Fresno Bee, a newspaper published in the City of Fresno, State of California, 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 receptively advertised fur products in that said advertisements:

(a) Failed to disclose the name or names of the animal or animals that produced the fur contained in the fur products as set forth in the Fur Products Name Guide in violation of Section 5(a)(1) of the Fur Products Labeling Act.

(b) Represented the volume of merchandise to be offered for sale to be \$200,000 worth of precious furs when in truth and in fact the

merchandise to be offered for sale was worth substantially less than \$200,000 in violation of Section 5(a) (5) of the Fur Products Labeling Act.

(c) Represented through such statements as "January Fur Sale" and "In January we make way for the new season by reducing our exquisite fur collection for clearance" and "Fabulous 55th Anniversary Sale" that savings could be effected from the purchase of respondents' fur products when such was not the fact in violation of Section 5(a) (5) of the Fur Products Labeling Act and Rule 44(a) of the said Rules and Regulations.

PAR. 9. In advertising fur products for sale as aforesaid respondents made claims and representations respecting 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 said Rules and Regulations.

PAR. 10. 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. John J. McNally for the Commission.

Thomas, Snell, Jamison, Russel, Williamson & Asperger, Fresno Calif., by *Mr. Howard B. Thomas*, for the respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondents with certain violations of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, and the Federal Trade Commission Act. An agreement has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that

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the complaint may be used in construing the terms of the order; and that the 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 hearing examiner having considered the agreement and proposed order and being of the opinion that they provide an adequate basis for appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. Respondent E. Gottschalk & Co., Inc., is a California corporation with its office and principal place of business located at Fulton and Kern (erroneously spelled Kearn in the complaint) Streets, Fresno, California. Respondent Joseph W. Levy is an officer of the said corporate respondent and has his office and principal place of business at the same address as said corporate respondent.

The said respondents are engaged in the sale at retail of a wide variety of merchandise. Their fur department is operated under a lease or concession arrangement with others regularly engaged in the sale of fur products. During the times materials to this proceeding the fur products offered for sale and sold on respondents' premises to the purchasing public were the property of their lessee and concessionnaire, Pacific Coast Fur Company, and were labeled, invoiced, advertised and sold by said lessee and concessionnaire and its representatives and agents, subject to respondents, over-all direction and control.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That E. Gottschalk & Co., Inc., a corporation, and its officers, and Joseph W. Levy, 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:

A. Misbranding fur products by:

1. Setting forth on labels affixed to fur products:

Order

(a) The term "blended" as part of the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe the pointing, bleaching, dyeing or tip-dyeing of furs.

(b) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder mingled with non-required information.

2. Failing to set forth the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in the required sequence.

B. Falsely or deceptively invoicing fur products by:

1. 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.

2. Setting forth on invoices a false geographic origin of the animal that produced the fur.

3. 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.

C. 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:

1. Fails to disclose the name or names of the animal or animals producing the fur or furs contained in the fur product, as set forth in the Fur Products Name Guide, and as prescribed under the Rules and Regulations.

2. Represents directly or by implication that the volume of merchandise to be offered for sale is higher than is the fact.

3. Offers fur products at a purported reduction in price when such purported reduction is in fact fictitious.

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

D. Making claims and representations respecting prices and values of fur products unless there are maintained by respondents full and adequate records disclosing the facts upon which such claims and 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 24th day of October, 1961, become the decision of the Commission; and, accordingly:

