

M. McNAUGHTON, ETC.

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

Docket 8447. Complaint, Oct. 12, 1961—Decision, Oct. 26, 1962

Order requiring a Los Angeles advertising copywriter, acting also as a fur salesman, to cease violating the Fur Products Labeling Act by placing advertisements in newspapers which failed to disclose the names of animals producing the fur in certain fur products, represented that fur products were

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guaranteed without disclosing the nature and extent of the guarantee, and represented falsely that prices of fur products were "at actual cost".

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 Harry Uswald, an individual trading as M. McNaughton, U.S. Advertisers, Associated Advertisers and Better Business Builders, 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. Harry Uswald is an individual trading as M. McNaughton, U.S. Advertisers, Associated Advertisers and Better Business Builders with his office and principal place of business located at 2501 West Seventh Street, Los Angeles, Calif.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 8, 1952, respondent, in association with various retailers of fur products as an advertising copywriter, 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 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 said advertisements, but not limited thereto, were advertisements of respondent which appeared in issues of the Los Angeles Times, a newspaper published in Los Angeles, California, having a wide circulation in California 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:

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

2. Represented, directly or by implication, that fur products were guaranteed without disclosing the nature and extent of the guarantee and the manner and form in which the guarantor would perform thereunder, in violation of Section 5(a) (5) of the Fur Products Labeling Act.

3. Represented prices of fur products to be "at actual cost" 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.

PAR. 5. 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. Robert W. Lowthian and *Mr. Eugene H. Strayhorn* for the Commission.

Mr. Benjamin Held, of Los Angeles, Calif., for respondent.

INITIAL DECISION BY RAYMOND J. LYNCH, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the respondent on October 12, 1961, charging that the respondent, individually and trading as M. McNaughton, U.S. Advertisers, Associated Advertisers and Better Business Builders in association with various retailers of fur products as an advertising copywriter, has been and is now engaged in the introduction into commerce and in the sale, advertising, and offering for sale in commerce, of fur products as defined in the Fur Products Labeling Act. The complaint charged that the respondent's acts and practices 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 in violation of the Federal Trade Commission Act. Respondent filed an answer to the complaint admitting and denying certain of the allegations set forth therein. A hearing was held on February 14, 1962, in Los Angeles, California.

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This proceeding is presently before the hearing examiner for final consideration upon the complaint, answer, testimony and other evidence and proposed findings of fact and conclusions filed by counsel supporting the complaint. Counsel representing the respondent failed to file proposed findings, conclusions and order.

Consideration has been given to the proposed findings of fact and conclusions submitted, and all proposed findings and conclusions not hereinafter specifically found or concluded, are rejected and the hearing examiner having considered the entire record herein makes the following findings of fact, conclusions drawn therefrom and issues the following order:

FINDINGS OF FACT

1. Respondent, Harry Uswald, is an individual trading as M. McNaughton, U.S. Advertisers, Associated Advertisers and Better Business Builders, with his office and principal place of business located at 2501 West Seventh Street, Los Angeles, California.

2. Subsequent to the effective date of the Fur Products Labeling Act, August 8, 1952, respondent, in association with various retailers of fur products and in particular with Regal Furs, Los Angeles, California as an advertising copywriter, has been and is now engaged in the introduction into commerce, and in the sale, advertising, and offering for sale in commerce of fur products and has sold, advertised and offered for sale fur products which have been made in whole or in part of fur which had been shipped in commerce as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act.

Respondent, during the period he was employed by Regal Furs, Los Angeles, California as an advertising copywriter, in addition to his duties in that capacity, also acted as a salesman for Regal Furs and did in fact sell two fur garments.¹ Section 3 of the Fur Products Labeling Act proscribes certain practices:

The introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce of any fur product which is misbranded or falsely and deceptively advertised or invoiced * * * is unlawful and shall be an unfair method of competition, and an unfair and deceptive act or practice, in commerce under the Federal Trade Commission Act.

Section 8(a)(2) of the Act authorizes the Commission to prevent *any person* from engaging in these acts.

(2) The Commission is authorized and directed to prevent *any person* from violating the provision of Section 3, 6 and 10(b) of this Act * * * and *any*

¹ Commission Exhibits 28 and 30.

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person violating any provision shall be subject to penalties. (Emphasis supplied)

The Congress thus did not limit the application of the Act to just fur manufacturers, wholesalers or retailers. It includes every person regardless of his occupation or capacity, who does one of the unlawful acts referred to above. The Ninth Circuit Court of Appeals in the case of *Jacques DeGorter v. FTC*, 244 F.2d 270 [6 S. & D. 310], stated:

The object of the statute before us—as appears from the legislative history, was to prevent, among other things, false advertising of fur products or furs, *no matter to what it related*. (Emphasis supplied)

In the present case the respondent prepared the advertisements, had full access to the stock and premises of Regal Furs, and others, originated or collaborated on the ideas in each specific advertisement, and placed the advertisements in the newspapers circulated in interstate commerce. The record sustains, and the examiner finds that respondent advertised “fur products” in “commerce” within the meaning of the Fur Products Labeling Act. Commission Exhibits 1 through 21 are samples of advertisements prepared by the respondent which bear his copyright. The purpose of the copyright in the respondent’s own words was: “To prevent other furriers from stealing the same ideas. I copyrighted dozens of these things.”

In one advertisement, Commission Exhibit 2,² respondent inserted over his own signature as advertising manager:

For over 50 years the name Beckman Furs has meant the finest in furs to thousands of the most famous and most fashionable stars of the Stage, the Screen, Television and High Society! Now you can buy the same type of fine furs as they, at our exceptional low January Clearance Price! Hurry in and get one.

Sincerely yours,
H. Uswald.

3. Paragraph 3 of the complaint alleges that the respondent falsely and deceptively advertised certain fur products in commerce through the media of newspaper advertisements, when said advertisements were not in accordance with the provisions of Section 5(a) of the Fur Products Labeling Act, and furthermore, that said advertisements were intended to aid and promote and assist directly or indirectly in the sale and offering for sale of said fur products. For the reasons set forth in Finding No. 2 and the false and deceptive advertisements contained in Commission Exhibits 1 through 21, which will be discussed later herein, the examiner finds that Paragraph 3 of the com-

² This advertisement was prepared while respondent was employed by Beckman Furs, Los Angeles, California.

plaint has been sustained by a preponderance of the reliable, substantial and probative evidence.

4. Among the advertisements mentioned above, but not limited thereto, were advertisements of respondent which appeared in issues of the Los Angeles Times, a newspaper published in Los Angeles, California, having a wide circulation in California 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:

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

Commission Exhibits 2 and 3 advertised "DYED RUSSIAN BROADTAIL JACKET" when no animal name was set forth in the advertisement. Commission Exhibit 4 contains deficiencies in that a "FINE ROYAL PASTEL CLUTCH CAPE" is advertised with no animal name given. Likewise, "DYED RUSS." "BROADTAIL JACKET" is advertised with the animal name omitted. Commission Exhibit 7 advertised "HOMO PASTEL STOLE", "ROYAL PASTEL CLUTCH CAPE". None of the above advertisements complied with the Act.

5. It is found that by means of the advertisements heretofore referred to in Finding No. 2 and other advertisements of similar import, not specifically referred to herein, respondent falsely and deceptively advertised fur products in that said advertisements:

Represented, directly or by implication, that fur products *were guaranteed* without disclosing the nature and extent of the guarantee and the manner and form in which the guarantor would perform thereunder, in violation of Section 5(a) (5) of the Fur Products Labeling Act." (Emphasis supplied)

There are many cases wherein the Commission has issued cease and desist orders against firms advertising false and deceptive guarantees. In *Samuel A. Mannis, et al.*, 293 F. 2d 774 [7 S.&D. 214] (Docket 7062), a case arising under the Fur Products Labeling Act, the Commission approved the finding of the hearing examiner who said:

The word "guaranteed" as used in the advertisements is incomplete. The Commission has held many times that the use of the word "guaranteed" in advertising without disclosing the nature and extent of the guarantee, is deceptive. The fact that the nature and extent of the guarantee is revealed at the time is of no defense.

The fact of the matter is the respondent guaranteed nothing nor did his employer, *Ryal Furs*, Docket No. 8446 [page 74 herein].

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6. By means of the advertisements referred to in Finding No. 2 above, and other advertisements of similar import not specifically referred to herein, respondent falsely and deceptively advertised fur products in that said advertisements:

Represented prices of fur products to be "at actual cost" 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.

As stated in Finding No. 2, respondent prepared the advertisements wherein fur products were advertised at actual cost. Respondent knew or should have known that the advertisements were false and deceptive, because the respondent was a man of long experience in the fur business and had complete run of the Regal Fur store by whom he was employed. The Commission witnesses Housel and Williams testified that it was as a result of the advertisements placed in the Los Angeles Times that they visited the Regal Fur store which resulted in their purchasing fur garments. Witness Housel testified that she interpreted the words "at actual cost" to mean "that the person who was selling did not make any profit" and "what he paid his supplier for the fur". Witness Williams interpreted the words "at actual cost" to mean "the purchase price of the original garment from the manufacturer".³ Commission witness Anderson testified that during the course of his investigation, a total of 25 sales were made as a result of the advertisements placed in the newspapers by the respondents (two of which sales were actually made by respondent himself)⁴ and that none of the fur products sold in the 25 sales referred to above were sold at actual cost. In fact, the respondent made no effort to check the accuracy of the statements made in the advertisements he prepared and he kept no records to substantiate such claims.

CONCLUSIONS

The acts and practices of the respondent hereinabove found are false, misleading and deceptive and 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.

This proceeding is in the public interest, and an order to cease and desist the above found unlawful practices should issue against respondent.

³ Record pp. 7, 11 and 12.

⁴ Commission Exhibits 28 and 30.

Final Order

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ORDER

It is ordered, That Harry Uswald, an individual trading as M. McNaughton, U.S. Advertisers, Associated Advertisers and Better Business Builders, or under any other trade names, 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 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. 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. Fails to set forth all the information required to be disclosed by each of the subsections of Section 5(a) of the Fur Products Labeling Act.

B. Represents, directly or by implication, that fur products are guaranteed unless the nature and extent of such guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously set forth.

C. Represents directly or by implication that prices of fur products are "at actual cost" or words of similar import, when such is not the fact.

D. Represents directly or by implication that savings are available to purchasers of fur products when such is not the fact.

FINAL ORDER

This matter having been heard by the Commission upon exceptions to the initial decision and brief in support thereof filed by respondent *pro se*, and the Commission having duly considered said exceptions and opposition thereto presented by counsel supporting the complaint; and

The Commission being of the opinion that respondent by virtue of his participation, as shown in this record, in the advertising practices charged in the complaint is amenable to the requirements of the Fur Products Labeling Act, and that the hearing examiner's finding

that said advertising practices are in violation of that Act is fully supported by the record; and

The Commission having previously scheduled an oral argument in this matter to be heard in Washington, D.C., on October 17, 1962, and the said hearing having been cancelled only after the Commission was advised by the respondent that he was financially unable to travel from Los Angeles, California, to Washington, D.C., to participate in the hearing and having requested that the oral argument instead be held in Los Angeles, California, which request was denied by the Commission; and

The Commission having considered respondent's letter of September 27, 1962, requesting in effect that the Commission reconsider its determination to dispense with oral argument, and having concluded that the briefs are entirely adequate to fully advise the Commission as to the matters at issue and that, therefore, respondent's request must be denied; and

The Commission having determined that the initial decision is appropriate in all respects:

It is ordered, That respondent's exceptions to the initial decision be, and they hereby are, denied.

It is further ordered, That the initial decision be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That respondent 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

SIDNEY BERNSTEIN, INDIVIDUALLY, FORMERLY AN
OFFICER OF ETELSON & BERNSTEIN, INC.