

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

IN THE MATTER OF

SAMUEL A. MANNIS TRADING AS
SAMUEL A. MANNIS AND CO., ETC.

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

Docket 8264. Complaint, Dec. 30, 1960—Decision, Aug. 2, 1963

Order requiring one of the largest exclusive retail fur dealers in the Los Angeles metropolitan area to cease violating the Fur Products Labeling Act by advertisements in newspapers which set forth earlier or comparative prices

without stating the time they were in effect and failed to set forth required information, and 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 Samuel A. Mannis, an individual, trading as Samuel A. Mannis and Co., and Furs by Mannis, 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. Samuel A. Mannis is an individual trading as Samuel A. Mannis and Co. and Furs by Mannis, with his office and principal place of business located at 6340 Hollywood Boulevard, Hollywood, California.

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 misbranded in that labels affixed thereto contained fictitious prices and misrepresented the regular retail selling prices of such fur products in that the prices represented on such labels as the regular prices of the fur products were in excess of the retail prices at which the respondent usually and regularly sold such fur products in the recent regular course of his business, in violation of Section 4(1) of the Fur Products Labeling Act.

PAR. 4. 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, con-

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cerning 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. 5. Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondent which appeared in issues of the Los Angeles Times, a newspaper published in the city of Los Angeles, 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, respondent falsely and deceptively advertised fur products in that said advertisements:

(a) Represented prices of fur products as having been reduced from regular or usual prices where the so-called regular or usual prices were in fact fictitious in that they were not the prices at which said merchandise was usually sold by respondent in the recent regular course of business, in violation of Section 5(a)(5) of the Fur Products Labeling Act and Rule 44(a) of said Rules and Regulations.

(b) Setting forth earlier or former comparative prices without stating the time of the earlier or former comparative prices in violation of Rule 44(b) of said Rules and Regulations.

(c) Represents directly or by implication through such statements as "Federal Trade Commission law states 'no fur nor fur product shall be labeled, invoiced or advertised in any manner which is false, misleading or deceptive in any respect'" that the Federal Trade Commission has approved the labeling, invoicing or advertising of respondent when such is not the fact, in violation of Section 5(a)(5) of the Fur Products Labeling Act.

(d) Contained information required under Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder which was not set forth in type of equal size and conspicuousness and in close proximity with each other, in violation of Rule 38(a) of said Rules and Regulations.

PAR. 6. In advertising fur products for sale as aforesaid respondent used comparative prices, percentage savings claims and claims that prices were reduced from regular or usual prices. Respondent in making such claims and representations failed to maintain full and adequate records disclosing the facts upon which such

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claims and representations were based in violation of Rule 44(e) of said Rules and Regulations.

PAR. 7. 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. John J. McNally, for the Commission.

Mr. Jerome Weber and *Mr. Jerome M. Bame*, Los Angeles, Calif. for respondent.

INITIAL DECISION by LOREN H. LAUGHLIN, HEARING EXAMINER

October 31, 1962

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, the Federal Trade Commission, on December 30, 1960, issued and subsequently served its complaint in this proceeding upon respondent, charging him with certain violations of the Fur Products Labeling Act and certain of the Rules and Regulations promulgated thereunder. Respondent answered said complaint on February 10, 1961, in substance denying all material allegations of the complaint except those pertaining to his name, trade names, business address, and his engagement in "commerce" in the "fur" and "fur products" business, as the same are defined and covered by the Fur Products Labeling Act.

The complaint charged three basic classes of violations, comprising in all six separate, distinct and particular types of alleged violations by respondent of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder. All of such charges have been vigorously contested in this proceeding. In substance they are:

1. Misbranding by affixing to garments labels containing fictitious prices and misrepresenting the same as regular prices of the fur products so labeled;

2. False and deceptive advertising:

- (a) by stating reductions in prices from fictitious regular and usual prices;

- (b) by setting forth earlier or comparative prices without stating the time the same were in effect;

- (c) by representing that the Federal Trade Commission had approved respondent's labeling, invoicing or advertising practices; and

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(d) by setting forth required items of related information in type not of equal size and conspicuousness, and not in close proximity to each other; and

3. Failing to maintain full and adequate records showing the basis for stated comparative and reduced prices, and savings claims.

In this initial decision it is found and determined that respondent has violated the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, in each of the said six particulars charged in the complaint.

Hearings were held in Los Angeles, California, June 12 to 16, inclusive, and June 19, 1961. At the end of such hearings both parties rested and the case was closed for the taking of evidence, subject to the right of each of the parties to file motions thereafter to strike and reinstate certain evidence. Opposing contentions on various matters were presented by counsel from time-to-time as they arose during the hearings; hence, there was no request for oral argument. Within the times fixed therefor, counsel supporting the complaint filed his motion to strike on September 15, 1961, and respondent filed his motions to strike and to reinstate evidence on September 20, 1961. Answers to the said motions were filed by each of the parties, respectively, on September 29 and October 13, 1961. The hearing examiner, on October 23, 1961, by order, confirmed all rulings relating to evidence theretofore made on the record, and denied the several said motions of the parties without prejudice to their future presentation in connection with counsel's proposed findings.

Numerous proposed findings of fact, conclusions of law, and a proposed order were duly submitted by each of the parties, on February 1, 1962. Counsel have extensively analyzed the evidence, but only counsel supporting the complaint has cited and discussed various Commission and judicial decisions pertinent to the evidence. All proposed findings which are not herein adopted, either expressly or in substance and effect, are hereby rejected; all rulings heretofore made in this proceeding are hereby confirmed; and any pending motions or objections not heretofore expressly granted, denied, or overruled are hereby denied or overruled.

The hearing examiner has carefully and fully reviewed the whole record, taking into consideration his observation of the appearance, conduct, and demeanor of the witnesses. All arguments, proposals and briefs of counsel have been thoroughly examined and duly considered in the light of the entire record. Upon the whole record, the hearing examiner finds generally that counsel supporting the

complaint has fully sustained the burden of proof incumbent upon him, and has established by reliable, probative and substantial evidence and the fair and reasonable inferences drawn therefrom, all of the material allegations of the complaint upon each of the several charges therein set forth. Upon the whole record, the hearing examiner therefore makes the following:

FINDINGS OF FACT

In General

None of the facts found herein are in substantial dispute. Counsel are in fundamental disagreement, however, as to whether the established facts constitute proof of any of the charges of the complaint, since counsel differ basically as to the inferences to be drawn from undisputed facts, and also as to the meaning of the law to be applied to such facts.

The evidence consists of the testimony of five witnesses, and 39 exhibits, as well as certain stipulated facts. While six witnesses testified, one of them gave no evidence of any value. This witness, Edgar Gevirtz, a friendly competitor of respondent, knew nothing of the facts involved herein. He attended the hearing under subpoena duces tecum issued at the request of counsel supporting the complaint, and was definitely an unwilling witness. When it clearly appeared that he had been called only to give expert opinion testimony on wholesale fur markets and prices, the witness was informed by the hearing examiner of his privilege of election to testify or not to testify as an expert witness and his right to receive adequate agreed compensation therefor, he respectfully declined to testify and was excused. All other witnesses were permitted to be extensively examined and cross-examined.

Approximately three-fourths of the testimony consists of that given by two witnesses, namely, the respondent, both as an adverse witness called by the Commission and later on his own behalf, and Kerper G. Probert for the Commission. Probert was an experienced investigator in what was the Commission's Division of Wool, Furs and Flammable Fabrics, since redesignated as its Bureau of Textiles and Furs. He conducted the investigation out of which this proceeding has arisen. This investigation was extensive, and consumed about a 4-week period from about August 23 through September 19, 1960. Probert was an exceedingly fair witness. On his long cross-examination over strong objections he was permitted, albeit reluctantly, to give a number of opinions. He was the expert

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called by the Commission, and respondent was entitled to full and fair cross-examination. Propert, however, was admittedly not an attorney at law (R. 432), and many of his answers were, either based, at least partially, upon legal conclusions, or upon limited hypotheses of facts. Insofar as his answers are inconsistent with findings made and conclusions drawn herein, they are rejected.

The Commission also presented the testimony of Harold Shepard, connected with A. I. Lipsey, Incorporated, a wholesale fur concern, which was one of respondent's suppliers, who produced records of his firm relating to his wholesale price offers to respondent and various other retailers; and Alfred A. Weiss, the general manager of respondent's fur store, who testified very briefly respecting the use by employees of coded prices on garment tags. Respondent called Abraham Shafran, of Malvin & Shafran, Inc., another wholesale furrier and supplier of respondent, who testified concerning fur sales made to respondent. Counsel supporting the complaint was not permitted to impeach or contradict this witness, or cross-examine by inquiring concerning a consent order against his firm and himself and other officers, Docket 7307, *Malvin & Shafran, Inc., et. al.* (1959), 55 F.T.C. 1785, because respondents in such matters admit no violation of law (R. 513-515).

Of the 39 exhibits, 31 were those of the Commission, and eight were those of respondent. Numerous exhibits identified by counsel supporting the complaint either were not subsequently offered in evidence, or, if received, were later withdrawn because all of these various exhibits were stipulated either to be duplicates of or substantially exemplified by other exhibits already in evidence. The Commission's exhibits consist of a number of respondent's newspaper advertisements; certain of his invoices; various fur garment labels of respondent, or true copies thereof; and a number of tabulations made from, or based upon, data found in respondent's labels and stockbook, by the Commission's representative Propert, assisted to some extent by Edwin H. Anderson, also an experienced investigator. Respondent's exhibits consist of numerous invoices and related tabulations, and copies of certain sheets from the stock record book of said Malvin & Shafran, Inc.

No complaining retail customer of respondent testified during this proceeding to having been deceived or misled by any of respondent's advertisements or labels. The quality, genus, or origin of respondent's furs are not in question herein. Several of the charges of the complaint depend upon the fair inferences to be drawn from the tabulations and averages made by Propert from his in-

spection of respondent's labels and stock record book. Many of the respondent's garments advertised by their respective stock numbers had been sold and their labels were gone before the investigation commenced, and respondent had utterly failed to keep any record of his actual pre-sale prices. For these as well as for other reasons, no direct and precise comparison of respondent's advertised prices with the prices at which he actually labeled or sold such garments could be made. These matters are hereinafter more fully set forth in connection with the particular charges to which they relate.

The following undisputed facts pertain to the general background upon which the several specific charges are based:

Samuel A. Mannis is an individual trading as Samuel A. Mannis and Co. and Furs By Mannis, with his office and principal place of business located at 6340 Hollywood Boulevard, Hollywood, in Los Angeles, California. He is an experienced retailer of furs, dealing directly with the consuming public, and is one of the largest, if not the largest, of the exclusive retail fur dealers in the Los Angeles metropolitan area. He most frequently advertises himself as operating "America's Largest, Most Beautiful Fur Salon!"

Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondent, in the course of his said business, has been for some years past, and is now, engaged in the introduction into commerce and in the sale, advertising 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.

Respondent, in the course of his said business, has also caused the dissemination in commerce, as "commerce" is defined in said Act, of a substantial number of newspaper advertisements concerning his fur products. Such advertisements were intended to, and did, aid, promote and assist, directly or indirectly, in the sale and offering for sale of said fur products. The advertisements in evidence or referred to herein appeared for some nine months, during the months of February through early December, 1960, in various and numerous issues of the Los Angeles Times, the Los Angeles Examiner and the Los Angeles Herald-Express, all such newspapers being published in the city of Los Angeles, State of California, and each having a large and wide circulation in said State and various other States of the United States. The respondent also ran some special sale advertisements during March, 1960, in

two newspapers published in Las Vegas, Nevada, which were disseminated in commerce. From these many advertisements and respondent's own testimony, it is established that he engages several times each week in various types of special bargain fur sales. Respondent claims, however, that much of his business comes from regular established trade, independent of sales advertisements, and that he advertises primarily to be competitive and to keep his name before the public.

In the operation of his business Mannis, as sole owner, actively exercises general executive control, particularly over the buying of fur products and the fixing of prices. He employs, as his general manager, the aforementioned Alfred Weiss, and his assistant, but no relation to him, Gilbert Weiss, who is respondent's son-in-law; Sidney Stevens, as his sales manager and assistant buyer; and a number of retail sales clerks.

Before passing to the evidence relating to the six particular charges of the complaint, certain basic and well-settled legal principles applicable to the case in general must be stated. In view of the widespread abuse of public confidence long existing in the fur business, the purpose of Congress in enacting the Fur Products Labeling Act was to make its provisions specific for the protection of the retail customer, the ultimate consumer. *F.T.C. v. Mandel Brothers, Inc.* (1959), 359 U.S. 388-389 [6 S.&D. 557, 561]. The Act must be interpreted hospitably with that end in view (*id.* 389). This decision is followed in a prior case against respondent here, *Mannis v. F.T.C.* (C.A. 9, 1961) 293 F. 2d 774, 777 [7 S.&D. 214, 217], where it was also held that the Act "places an affirmative burden on a fur seller to state the truth respecting his furs offered for sale" (*id.* 777). The detailed Rules promulgated by the Commission pursuant to the Act have been validly adopted (*Housing Corporation v. F.T.C.* (C.A. 2, 1961) 290 F. 2d 803, 807) [7 S.&D. 106, 110]. Congress did not provide the Federal Trade Commission with the flexibility and latitude it has in the enforcement of § 5 of the Federal Trade Commission Act (*Gimbel Brothers, etc.*, F.T.C. Docket 7888 (February 23, 1962) [60 F.T.C. 359], page 10 of mimeographed copy of opinion). This case holds that a single advertisement was sufficient to sustain a cease-and-desist order when respondent had theretofore broken faith with the Commission (pages 8-10). The Commission had held in *Samuel A. Mannis, etc.* (1960), 56 F.T.C. 833, at page 855, that even technical violations of the Act and Rules should be prohibited, and its order was sustained in *Mannis v. F.T.C.*, *supra*, 293 F. 2d at pages 776-777 [7 S.&D. 216-217]. Claims made by respondents in other

cases that violations of the Act and Rules, as found by the Commission, were technical and trivial, also have been repeatedly rejected by the Courts. See *Mandel Brothers, Inc. v. F.T.C.* (C.A. 7 1958) 254 F. 2d 18, 21 [6 S. & D. 388, 391]; and *Hoving Corporation, etc. v. F.T.C.*, *supra*, 290 F. 2d at pages 805-806 [7 S.&D. 108-109].

Of the six separate charges of the complaint hereinafter enumerated, each of two stands independently upon inspection of the advertisements on which it is based: namely, charge 2(c), that of representing that the Commission has approved respondent's various practices, and charge 2(d), that of failing to set forth required items of related information in type of equal size and conspicuousness and in close proximity to each other. Charge 3, that respondent failed to maintain full and adequate records, is in substantial measure the basis for each of the remaining three charges, charge 1, misbranding by affixing labels containing fictitious prices, charge 2(a), the advertising of fictitious prices; and charge 2(b), the failure to set forth the time when earlier or comparative prices were in effect. The charges will be determined in the foregoing order.

Findings and Conclusions as to Charge 2(c) That Respondent's Advertising Represents Commission Approval of His Practices

It is charged in paragraph 5(c) of the complaint that respondent has falsely and deceptively represented in his advertising, directly or by implication, that his labeling, invoicing, or advertising has been approved by the Federal Trade Commission. It is contended that this violates 5(a)(5) of the Fur Products Labeling Act. In the midst of a mass of various sales propaganda with reference to his standing in the fur business and to the prices and quality of his fur products, respondent has inserted an emphasized block, or "F.T.C. box," as respondent refers to it (R. 13), in each of numerous separate newspaper advertisements (Examples: CX 7-A, Los Angeles Times, April 2, 1960, CX 8-A, Los Angeles Times, June 20, 1960; and CX 11-A, Los Angeles Times, July 5, 1960). Following the words "Read The Facts" in large, boldface type, the "box" appears in such ads:

FEDERAL TRADE COMMISSION LAW STATES "NO FURS NOR FUR PRODUCTS SHALL BE LABELED, INVOICED OR ADVERTISED IN ANY MANNER WHICH IS FALSE, MISLEADING OR DECEPTIVE IN ANY RESPECT"

That other identified advertisements of respondent contained this statement was stipulated on the record, and such exhibits withdrawn or not offered (page 13).

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Counsel supporting the complaint contends that basically the advertisements speak for themselves; and further contends that their impropriety should be adjudged particularly because respondent already had been prohibited by the Commission from misbranding his fur products and from falsely and deceptively invoicing and advertising such products in Docket 7062, *Samuel A. Mannis, etc.*, in which matter the Commission had then only recently issued its final order to cease and desist on February 9, 1960 [56 F.T.C. 833]. This proceeding was, at the respective times of the publication of said advertisements, in process of appeal to the Court of Appeals of the Ninth Circuit, which Court later, on August 28, 1961 [7 S.&D. 214], denied the appeal and affirmed the Commission's order in all respects (*Mannis v. F.T.C.*, *supra*).

Upon reading the said advertisements in full context, it must be concluded therefrom that the inclusion of this broad, although legally correct, statement of law in the context of respondent's advertising implies full and general sanction, endorsement and approval by the Commission of respondent's labeling, invoicing and pricing practices, including any and all such matters which are set forth or referred to in the advertisements themselves. Such use of statutory language falls within the ambit of an exceedingly audacious, unfair, misleading and highly improper practice. While the statement by itself, as to the law, is correct, its inclusion in the midst of respondent's advertising matter could have no other purpose than to mislead the buying public into believing that respondent's advertising claims and other practices had been approved by the Federal Trade Commission because they were in full compliance with the law; and therefore such inclusion would be unfair competition. This statement in that context certainly has the capacity so to mislead the public and to be unfair to competitors.

An analogous situation involving unwarranted and improper use of judicial orders in promotional statements and endorsements or vindications of challenged activities of a respondent met with strong condemnation by this Commission in Docket 6962, *Mytinger & Casseberry, Inc., et al.* (Sept. 28, 1960) [57 F.T.C. 717] mimeographed copy of opinion, pages 4-8. See also Docket 7844, *Pioneers, Inc.* (1960) [57 F.T.C. 552], prohibiting any statements to the effect that the Commission had approved that respondent's battery product by dismissing its earlier complaint against respondent in Docket 6190, 52 F.T.C. 1351 (1956). While not referring to it in his proposed findings, during the trial counsel supporting the complaint also cited the Commission's Rule 46, and contended it was

the basic controlling authority on this point. This Rule provides as follows:

No representation nor suggestion that a fur or fur product is guaranteed under the Act by the Government, or any branch thereof, shall be made in the labeling, invoicing or advertising in connection therewith.

Since this charge is not based upon an alleged violation of said Rule, a conclusion premised thereon would be prejudicially erroneous, and therefore such contention is disregarded herein.

Respondent's counsel jested about this charge during the hearings, to the effect that respondent should be commended by the Commission for advising the general public, entirely at respondent's expense, that "the Federal Government * * * is actually interested in their welfare" (R. 26). Evidently realizing the real effect of such representation, however, such counsel, apparently more seriously, contends that § 5(a)(5) of the Fur Products Labeling Act must be narrowly construed as prohibiting false and deceptive statements about the fur product itself, and hence the language here under attack establishes no violation of such Act. The said statutory provision, however, clearly states (insofar as material to this point):

For the purposes of this Act, a fur product or fur shall be considered to be falsely or deceptively advertised if any advertisement * * * contains any form of misrepresentation or deception, directly or by implication, with respect to such fur product or fur.

This provision has been repeatedly held to cover false advertising of prices or "any form of misrepresentation", as the statute so plainly says. See *De Gorter v. F.T.C.* (C.A. 9, 1957), 244 F. 2d 270, 276-279 [6 S.&D. 310, 317-321]; and *Mandel Brothers, Inc. v. F.T.C.* (C.A. 77, 1958), 254 F. 2d 18, 20-21 [6 S.&D. 388, 390-391].

Respondent's counsel further urges that no independent witnesses have been called to interpret the advertising statement in question to convey the meaning that counsel supporting the complaint contends it does. For nearly twenty years it has been uniformly held in numerous decisions that the Commission need not sample public opinion to interpret advertising, but may determine from its own experience the meaning and probable effect of advertising statements upon the public mind. See *Niresk Industries, Inc. v. F.T.C.* (C.A. 7, 1960), 278 F. 2d 337, 341-342 (and cases cited) [6 S.&D. 727, 732-734], *cert. den.* (1960) 364 U.S. 883 Respondent's own similar contention to like effect in *Mannis v. F.T.C.*, *supra*, 293 F. 2d 777, was rejected.

It is urged, in essence, by counsel supporting the complaint that since the Commission's order in the prior case against respondent had just been issued and the appeal to the Ninth Circuit was

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then pending, when these advertisements were published, this increases the impropriety and culpability of respondent as to this charge. While no encomium for good taste or respect for the law is due respondent for his use of this language in his said advertising, his motive and intent are immaterial in this type of proceeding, and no penalty is assessable therefor.

While respondent's counsel claims that this type of advertising is no longer being used (R. 135), there is neither any admission that such practice is unlawful, nor any evidence nor assurance that respondent has definitely and permanently abandoned this type of representation in his advertising. It is therefore determined and concluded that in the context of these said advertisements, the use of the above-quoted language is false, misleading, and deceitful, and violative of § 5(a)(5) of the Fur Products Labeling Act.

Findings and Conclusions As To Charge 2(d) That
Respondent Has Failed in His Advertising Properly
to Print and Associate Related Required Items of
Information

It is charged in paragraph 5(d) of the complaint that certain types of required information contained in respondent's advertisements were not set forth in type of equal size and conspicuousness and in close proximity with each other, in violation of Rule 38(a) of the Rules and Regulations promulgated under § 5(a) of the Fur Products Labeling Act.

Rule 38(a), insofar as material to this charge, provides:

In advertising furs or fur products, all parts of the required information shall be stated in close proximity with each other and, if printed, in legible and conspicuous type of equal size.

* * * Nor shall * * * [nonrequired] information or representations be set forth or used in such manner as to interfere with the required information.

The evidence pertaining to this charge consists of statements made in several of respondent's advertisements, Commission's Exhibits 4, 9 and 25, appearing in several Los Angeles newspapers of large national circulation. These were stipulated to exemplify numerous other like advertisements (R. 9, 14). In Commission's Exhibit 4 there appears a page-length, 3-column ad published in the Herald-Express on February 17, 1960. It sets forth near its beginning a list of furs only generally described in eight classes as follows:

*Studio Rentals!
*Window Display Furs! *Sample Furs! *Trade-Ins!
*Also Fashion Show Furs! *Unclaimed Layaways!
*Unclaimed Storage! *Repossessions!

This list appears in boldface type of approximately 48-point size, and is followed by six inches of other matter, including much of nonrequired character. Then appears “*Used Second Hand Furs” in boldface type of approximately 12-point size. The type-size ratio of the fur description to that of the widely separated and purportedly related footnote is about 4-to-1, and is *per se* violative of Rule 38(a).

Commission’s Exhibits 9 and 25 are substantially identical ads appearing respectively in the Times of July 8, 1960, and the Examiner of July 11, 1960. They are two-column ads, one column full-page length and the other about one-half page length. The ad at the top states in large, varying size, boldface capital letters: “ANNUAL CLEARANCE OF STUDIO RENTAL FURS.” Following some seven inches of other matter, on the lower third of such ads appears: “This Is A Partial Listing! See Them All!,” followed by a list of 19 specific furs and their prices, an asterisk following each price. This list is printed in standard 12-point type, the prices in boldface type of the same size. Then comes three linear inches of nonrequired information in various large boldface types, and at the extreme bottom of the ad, in miniscule type, appears, “Used Second Hand Fur.” What may have been intended to be an asterisk apparently printed only as a dot, due to the very small type used. The type-size ratio of the listed furs and their prices to that of the separated and purportedly related footnote is definitely violative of Rule 38(a), particularly as the said footnote is not in conspicuous type. A footnote or marginal note, by its very nature, can seldom be in close proximity to the textual matter to which it relates; is confusing and deceptive to the unskilled reader; and under Rule 38(a), should never be used in the advertising of furs and fur products.

That fur products are used or second hand is information that is required to be stated in advertising, both by § 5(a)(2) of the Fur Products Labeling Act and by Rules 21 and 23 thereunder. It is contended and testified to, in substance, however, by respondent (R. 101, 102 and 105) that while some of the above-described furs would certainly be second hand, others, such as “unclaimed lay-aways,” “window display furs” and “sample furs,” would be new, and that fashion-show furs might be considered as either new or used. Since all these classes of furs listed, referred to in the foregoing advertisements, were designated as used or second-hand furs by respondent himself, the only question involved here is his failure so to indicate, in type the same in size and conspicuousness, and in

close proximity to the furs named or listed, in accordance with Rule 38(a). It is immaterial whether such failure would deceive the general public, since the Rule is so specific as to permit no variance.

It is obvious from even a casual examination of the ads here in question that they do not conform to Rule 38(a). The footnote language in all of these ads, stating that the furs for sale are used or second hand, is definitely not in the same size type, nor equally conspicuous as, nor in close proximity to, the description of the furs advertised. Each ad speaks for itself, and needs only analysis in the light of the Rule. Hence it is determined and concluded that respondent has violated Rule 38(a) of the Rules and Regulations promulgated under § 5(a) of the Fur Products Labeling Act.

Findings and Conclusions As To Charge 3,
That Respondent Has Failed To Maintain
Full And Adequate Records

It is charged in paragraph 6 of the complaint that respondent, in violation of Rule 44(e), failed to maintain full and adequate records disclosing the facts upon which his claims and representations as to comparative prices, percentage savings, and reductions from regular or usual prices were based. This rule provides:

Persons making pricing claims or representations of the types * * * [advertisements "with comparative prices and percentage claims except on the basis of current market values or unless the time of such compared price is given"] * * * shall maintain full and adequate records disclosing the facts upon which such claims or representations are based.

It is now well established that furriers must, under Rule 44(e), keep such records as will be "an aid to the Commission in investigating and determining if false or deceptive advertising claims have been made" and shall "indicate the facts on which they made their claim so that the Commission can determine the propriety of making such a claim on those facts" (*Morton's, Inc. v. F.T.C.* (C.A. 1, 1961), 286 F. 2d 158, 163-164 [7 S.&D. 6, 12-13], followed in *Gimbel Brothers, etc.*, Federal Trade Commission Docket 7888 (February 23, 1962) [60 F.T.C. 359], mimeographed Commission opinion, page 9).

The evidence herein is clear that the respondent has not maintained any record whatsoever of the prices at which he formerly sold the furs he had advertised on numerous occasions at reduced prices. The Commission's representative, Propert, although given full cooperation by the respondent, upon careful checking of respondent's business records and diligent search over a period of some ten or twelve days, for a total of from 30 to 60 hours, in respondent's place of business (R. 429), could find no records of

prices to sustain the pricing claims made by respondent in his various advertisements in evidence here, except as to one special purchase of furs made in New York (R. 330-332, 336, 359). Respondent's records consisted of a stock record book, purchase invoices, and certain entries as to cost of furs as set by respondent after their purchase. Each fur product was identified by a specific item number which was to be found in the invoice file. While labels and tags showing the alleged current prices of garments then in stock were attached thereto, these are not records of permanent character required by the Rule. Respondent repeatedly admitted, and even glorified his position, that he was not required to, and did not, keep any permanent record of his actual past or currently set selling prices (R. 125-131, 141-143, 744-751). He particularly testified that he had once considered setting down his retail prices, but had decided against doing so, as his inflated retail prices "would look a little ridiculous" because they "would be strictly fictitious to begin with" (R. 93). He relied, however, on several things which he claimed were sufficient to justify his advertising "was" and "now" selling prices and the like. Among these were his alleged general knowledge of the fur business, the cost to him of the garments, his specific recollection of the items which he had sold, his ability to go to the racks where garments were hung and identify the price from the tag affixed thereto, his usual selling prices, and the formula on which he set up his prices, based upon his costs. These matters of personal skill and memory on the part of respondent or any of his employees do not comprise records in any sense. Adequate and appropriate records, by their very nature, cannot be kept in one's memory, where they are not accessible to inspection as provided in said Rule.

The Commission, in determining whether a violation has occurred, cannot be expected to rely upon the vagaries and faulty recollection of any furrier, unsupported by permanent written records. Respondent's claims that he kept the evidence as to the "cost" of garments and that his prices were established on a fixed formula of "cost" are irrelevant. The evidence shows he actually had no regular fixed formula, but raised or lowered prices according to his then judgment of the current market value of each garment. However liberally construed, the Commission's said Rule requires that a furrier must "keep such records as are needed to disclose the truth or falsity of the pricing representations made". That the maintenance of such records would be unduly burdensome, as claimed by respondent, is wholly irrelevant to the requirements of Rule 44(e) (*Gimbel Brothers, supra*).

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It is therefore determined and concluded that respondent has failed to maintain full and adequate records disclosing the facts upon which his claims and representations as to comparative prices, his percentage-savings claims, and his representations as to reductions from regular or usual prices were based, and is therefore in violation of Rule 44(e) of the Rules and Regulations promulgated under the Fur Products Labeling Act.

Findings and Conclusions As To Charge 1, That
Respondent Misbranded His Fur Garments By
Attaching Labels Bearing Fictitious Prices

It is charged in paragraph 3 of the complaint that certain of respondent's fur products were misbranded in that labels affixed thereto contained fictitious prices, and misrepresented the regular retail selling prices of such fur products by setting forth purported regular prices higher than the retail prices at which respondent, in the recent regular course of his business, had usually and regularly sold such fur products, in violation of § 4(1) of the Fur Products Labeling Act.

Said § 4(1) of the Act provides:

* * * a fur product shall be considered to be misbranded—(1) if it is falsely or deceptively labeled or otherwise falsely or deceptively identified, or if the label contains any form of misrepresentation or deception, directly or by implication, with respect to such fur product * * *.

Since respondent had maintained no records whatsoever of any of his actual selling prices, Propert, the Commission's investigator, made an extensive analysis of such data as he could find, and prepared therefrom a series of tabulations (CXs 18 through 24) made up from the pricing and code data found on the labels of some 288 fur products which were in respondent's stock at the time of the investigation. He also made copies of exemplary labels or tags attached to garments in respondent's then current stock (CX 16 series). These pricing studies show that the prices on respondent's garment labels or tags are generally 15% higher than the actual selling prices, which were frequently arrived at after negotiations with customers.

The yellow tags described the genus, origin, item number and type of garment, as well as its alleged current selling price. This was the tag the customer could see and read. A green ticket or tag, also attached to such garment, contained a coded price for the information of the salesman, and a cost indication keyed to respondent's stock record book, about which the salesman was not permitted to know anything. While the record is clear that the

salesmen could not, and did not, know the cost of the garment to respondent, and were not permitted to reduce the price of any garment unless especially authorized to do so after conference with respondent or one of his executives, and that such reduction in price to effect a sale took place only on certain occasions, nevertheless such fictitious pricing practice falls within the judicial condemnation enunciated in *De Gorter, et al. v. F.T.C.*, (C.A. 9, 1957), 244 F. 2d 270, 281 [6 S. & D. 310, 323].

On each garment there were three prices: a ticketed top price written in dollars and cents, fixed arbitrarily by the * * * [furriers] * * *. To guide the sales person, two additional prices, *in code*, were placed upon the tag—at either of which the fur could be sold, the percentage of the sales person's commission depending on the price secured. The ticketed price was merely a *bargaining* price, of the type which characterizes oriental huckstering.

* * * * *

As already appears, the ticketed price was merely the highest price that the * * * [furriers] * * * had placed on the garment, which, when reduced by the sales person to the coded prices, led the customer to believe he was "picking up" a bargain which, in reality he was not.

Such practice has most recently been held illegal by the Commission in Docket 8446, *Edgar Gevirtz, etc.* July 17, 1962 [61 F.T.C. 74]. (Gevirtz is the reluctant expert witness called herein for the Commission, who was excused as hereinbefore stated.)

Respondent testified that some of his customers desire to bargain, and he urges that he has the right to bargain and change his prices to hold his trade. Of course, if his advertised and labeled prices are the actual, true record and sale prices of his product, the merchant has a right to bargain with his customers. But whatever rights he may have to bargain, he cannot advertise and label his products with fictitious prices, and then reduce such prices in his bargaining, so that the customer is deceptively led to believe that he is the beneficiary of a great cut in price, which is the practice of respondent as herein established.

It is therefore determined and concluded that respondent has misbranded his fur products as charged, in violation of § 4(1) of the Fur Products Labeling Act.

Findings and Conclusions As To Charge 2(a),
That Respondent's Advertisements Contain
Fictitious Prices

It is charged paragraph 5(a) of the complaint that by means of his said advertisements, respondent has falsely and deceptively represented the prices of his fur products as having been reduced from his regular or usual prices, when the so-called regular or usual

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prices were in fact fictitious, in that they were not the prices at which said products were usually sold by respondent in the regular course of his business, in violation of §5(a)(5) of the Fur Products Labeling Act and Rule 44(a) of the Rules and Regulations promulgated thereunder.

Section 5(a)(5) of the Fur Products Labeling Act provides:

* * * a fur product or fur shall be considered to be falsely or deceptively advertised if any advertisement, representation, public announcement or notice which is tended to aid, promote, or assist directly or indirectly in the sale or offering for sale of such fur product or fur—(5) * * * contains any form of misrepresentation or deception, directly or by implication, with respect to such fur product or fur * * * .

Rule 44(a) provides:

No person shall * * * advertise a fur or fur product at prices purported to be reduced from what are in fact fictitious prices, nor at a purported reduction in price when such purported reduction is in fact fictitious.

Respondent has been very resourceful in his advertising. He has cleverly offered his fur products for sale in a wide variety of ways, stating the same general theme of substantially reduced prices by using a multitude of differing arrangements of words and figures all to the same end, the deception of the retail customer.

The numerous advertisements in evidence show the following representative types, among others, of advertising with respect to reduced prices:

"Was" and "now" prices listed with the words "up to 1/2 off" (CXs 3, 6 and 13);

Usually sells for \$500 to \$700 — sale price \$299" (CXs 7, 8, 12 and 14);

"Save up to 1/2 of original price — now as low as \$1695," etc. (CXs 10, 15-A and -B);

"At drastically reduced prices — \$88," etc., for various garments (CX 14); and

"Out they go at fantastic bargain prices," followed by listed prices for specific garments (CX 25).

Since respondent maintained no record of his regular and usual prices, the tabulations and computations prepared by Property establish beyond question that the "regular or usual" prices advertised by respondent must, of necessity, have been fictitious. And since the Act "places an affirmative burden" on respondent "to state the truth respecting his furs offered for sale" (*Mannis v. F.T.C., supra*), and he has offered no such proof, his contentions in defense of this charge, like all his other defenses made herein of justification or

excuse for his unlawful acts, are rejected as entirely irrelevant. The falsity of his alleged prices is clearly shown.

It is therefore determined and concluded that respondent has published fictitious prices in his advertising, in violation of § 5(a)(5) of the Fur Products Labeling Act, and Rule 44(a) of the Rules and Regulations promulgated thereunder.

Findings and Conclusions As To Charge 2(b), That
Respondent Has Set Forth Earlier Or Former
Comparative Prices Without Stating The Time
When Such Prices Were In Effect

It is charged in paragraph 5 of the complaint that respondent, in violation of Rule 44(b) of the Rules and Regulations promulgated under the Fur Products Labeling Act, has set forth earlier or former comparative prices in his advertising, without stating when such prices were in effect.

Rule 44(b) provides:

No person shall, with respect to a fur or fur product, advertise such fur or fur product with comparative prices and percentage savings claims except on the basis of current market values or unless the time of such compared price is given.

In *Associated Dry Goods Corp., et al.* (1959), 56 F.T.C. 638, 655, it was held that where in advertising the price of their fur products, respondents, also Los Angeles furriers, used such terms as regularly, "formerly," "originally" and "was" prices, set out in comparison to "now" prices which were lesser,

the lower figures indicated the prices at which the garments were then being offered to the public; the higher figures indicated the prices at which the garments previously had been offered for sale by the respondents. This is * * * evident from the wording of the representations. Since respondents' former prices are shown in these price comparisons, rather than current market values, the time at which the former prices were in effect should have been stated so as to comply with Rule 44(b). We conclude that violations have been shown in this respect * * * .

The record, as already stated, is replete with advertisements of respondent using the terms "was" and "now" and the like, in comparative pricing. In none of these many ads did respondent state at what time the former prices referred to were in effect. As a practical matter he could not do so, because not only had he failed to keep a permanent record of his actual prices, but he frequently changed his prices, at his discretion, to accord profit-wise with what he admits that he thought was their increased replacement value in the market. Small wonder that respondent complains it would be burdensome for him to keep a record of his prices, in view of

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the speed with which he changed his mind regarding the current market value of his products!

It is therefore determined and concluded that respondent has failed to set forth in his advertisements of comparative prices and percentage savings claims the time when the former or compared prices were in effect, in violation of Rule 44(b) of the Rules and Regulations promulgated under the Fur Products Labeling Act.

CONCLUSIONS

Based upon due consideration of the entire record herein, the hearing examiner concludes that counsel supporting the complaint has adequately sustained the burden of proof incumbent upon him, and has established by reliable, probative and substantial evidence that respondent has violated the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in all respects charged in the complaint herein.

The respondent has now been before the Commission in two proceedings in the past several years: the case at bar, and a former case, *Samuel A. Mannis and Company*, 56 F.T.C. 833, affirmed 293 F. 2d 774. In that former case, the Commission, in its decision, found that respondent had misbranded his fur products in five different ways; that he had falsely invoiced his fur products in three different ways; and that he had falsely advertised such products in eleven different ways. In its order (56 F.T.C., at pages 858-860), the Commission prohibited each of such violations specifically and separately. In the present proceeding, it has been determined that the respondent has misbranded his fur products in one particular; has falsely advertised such products in four particulars; and has failed to maintain adequate records of his prices.

None of the charges in the present proceeding were involved in the prior case; and in the present proceeding, no false invoicing is involved. But respondent has now been found, in these two proceedings before the Commission, to have misbranded his fur products in a total of six different ways, and to have falsely advertised such products in a total of fifteen different ways. Since, under the Fur Products Labeling Act and the present 49 Rules promulgated thereunder, an infinite number of violations are possible, the hearing examiner is of the opinion that a cease-and-desist order should issue herein, broad enough to preclude the necessity of further proceedings before the Commission to prohibit the endless specific future viola-

tions. The Commission's latest expression of its policy in this respect states:

In framing remedial measures to prevent the recurrence of unfair trade practices, we are not required to confine the order to a narrow prohibition of the illegal practices in the precise forms in which they have existed in the past as long as the remedy imposed is reasonably related to the unlawful practices found to exist. * * * (Docket 8085, *Country Tweeds, Inc., et al.*, September 21, 1962) [61 F.T.C. 1250, 1281].

Accordingly,

It is ordered, That Samuel A. Mannis, an individual trading as Samuel A. Mannis and Co. and as Furs By Mannis, or under any other trade name, and his 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. Misrepresenting fur products by the use, in any manner, of false, misleading or deceptive statements of any kind in his labeling or advertising;

2. Misbranding fur products by:

- A. Falsely or deceptively labeling, or otherwise identifying, such products as to the regular prices thereof by any representation that the regular or usual price of any fur product is any amount higher than the price at which respondent has usually and customarily sold such products in his recent regular course of business;

3. 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. Represents directly or by implication that the regular or usual price of any fur product is any amount higher than the price at which respondent has usually and customarily sold such products in his recent regular course of business;

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B. Sets forth earlier or former comparative prices without stating the time such prices were in effect;

C. Represents directly or by implication, through such statements as "Federal Trade Commission law states no fur nor fur product shall be labeled, invoiced or advertised in any manner which is false, misleading or deceptive in any respect", or by words or statements of similar import or meaning, even if true in fact, that the United States Government or any department or agency thereof has approved respondent's labeling, advertising, or any other practice of respondent;

D. Fails to set forth all items of information required by the Fur Products Labeling Act or the Rules and Regulations promulgated thereunder, in type of equal size and conspicuousness, and in close proximity with each other;

4. Making claims and 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.

OPINION OF THE COMMISSION

AUGUST 2, 1963

By MacIntyre, *Commissioner*:

This matter was heard by the Commission upon the appeal of respondent from the initial decision of the hearing examiner sustaining the complaint. The complaint herein, issued December 30, 1960, charges that respondent has violated the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder.

Among the charges in the complaint upheld by the hearing examiner were allegations that (1) certain fur products were misbranded by affixing thereto labels containing fictitious prices in excess of the retail prices at which the respondent usually and regularly sold such fur products in the recent regular course of his business and (2), that respondent falsely represented in newspaper advertisements that certain fur products had been reduced from a stated regular or usual price, when, in fact, the stated usual or regular price was fictitious and was not the price at which said garments had been sold by respondent in the recent regular course of business.

As proof of both of these violations, the hearing examiner relies upon a series of tabulations prepared by a Commission investigator. The tabulations compare gross average profits which would be realized on a group of 288 furs in respondent's store at the time the investigation was conducted, if they were to be sold at the prices on

their labels, with the gross profit margin actually realized on accomplished sales of furs in an immediately preceding period. It is the Commission's views that these tabulations do not constitute substantial evidence to support the hearing examiner's order to cease and desist.

Among the deficiencies which the Commission notes in the tabulations is that the accomplished sales were compiled for the period February through August, a period during which retail fur prices are somewhat higher than during the peak sales winter months. Moreover, the record does not demonstrate that the tagged garments, allegedly fictitiously priced, were representative of or similar in grade and quality to the garments which had been sold in the preceding period and for which the actual gross margin of profit was computed.

The Commission views with disfavor the practice of inflating the advertised or labeled price of any article beyond the price for which it or like articles have been sold or offered in the recent regular course of business. However, proof that such garments have been falsely and fictitiously priced in advertisements or on labels ordinarily includes a showing that garments similar in grade and quality have been recently sold for a lower price.

Such proof is difficult to adduce under the best of circumstances, and is almost an impossibility when, as here, the respondent does not maintain the proper records as required by law and regulation. But difficulty of proof is never a substitute therefor, and the fictitious pricing allegations of this complaint must fall, for they have not been proven by reliable and substantial evidence. This respondent will, in the future, be required to maintain adequate records in support of any pricing advertising or labeling of the types described in subsections (a), (b), (c) and (d) of Rule 44 of the Rules and Regulations under the Fur Products Labeling Act with the result that his future practices can and will be subjected to the scrutiny which Congress has directed.

In several of its newspaper advertisements the respondent has printed the following legend in large, boldfaced type:

FEDERAL TRADE COMMISSION LAW STATES
"NO FUR NOR FUR PRODUCTS SHALL BE LABELED, INVOICED
OR ADVERTISED IN ANY MANNER WHICH IS FALSE, MISLEADING
OR DECEPTIVE IN ANY RESPECT"

The complaint alleged that this statement was deceptive and the hearing examiner concluded that "the inclusion of this broad, although legally correct, statement of law in the context of respondent's advertising implies full and general sanction, endorsement, and

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approval by the Commission of respondent's labeling, invoicing and pricing practices, including any and all such matters which are set forth or referred to in the advertisements themselves. Such use of statutory language falls within the ambit of an exceedingly audacious, unfair, misleading and highly improper practice."

The Commission does not feel that the respondent's representation is as flatly deceptive and unlawful as the hearing examiner finds. The representation is literally true, but, of course, this would not save it if it was used in a manner likely to deceive. See *Kalwaitys v. Federal Trade Commission*, 237 F.2d 654, 656 (7th Cir. 1956) [6 S.&D. 72, 74]. But in this instance we are not persuaded that the record evidence supports the hearing examiner's conclusion that the advertising implies full and general sanction, endorsement and approval by the Commission of respondent's labeling, invoicing and pricing practices. There is no testimony in the record to support the hearing examiner's interpretation, and while he correctly holds that the Commission need not sample public opinion to interpret advertising, we are unable to here hold upon the basis of the advertisement alone that unlawful deception has been practiced. Thus, respondent's appeal of the hearing examiner's holding on this point must be allowed.

Upon a review of the complete record, the Commission has concluded that the findings and conclusion of the hearing examiner dealing with all of the remaining counts of the complaint not discussed above in this opinion are appropriate and proper and respondent's appeal with respect thereto is denied.

An order modifying the initial decision in conformity with the Commission's views as above expressed will issue.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT
OF COMPLIANCE

This matter having been heard by the Commission upon respondent's appeal from the initial decision which sustained all of the allegations of the complaint, and the Commission having determined that certain of respondent's allegations of error are well founded and that the appeal should be granted in part and denied in part:

It is ordered, That the initial decision of the hearing examiner be, and it hereby is, modified by vacating and setting aside:

1. All of the findings and conclusions appearing therein under the heading "Findings And Conclusions As To Charge 2(c), That Respondent's Advertising Represents Commission Approval Of His Practices."

2. All of the findings and conclusions appearing therein under the heading "Findings And Conclusions As To Charge 1, That Respondent Misbranded His Fur Garments By Attaching Labels Bearing Fictitious Prices."

3. All of the findings and conclusions contained therein under the heading "Findings And Conclusions As To Charge 2(a), That Respondent's Advertisements Contain Fictitious Prices."

4. All of the material found under the heading "Conclusions" including the order to cease and desist proposed by the hearing examiner.

It is further ordered, That the initial decision as modified by the vacating and setting aside of the above-described parts be, and it hereby is, adopted as the decision of the Commission, and that in lieu of the order proposed by the hearing examiner the Commission hereby issues this, its own order to cease and desist:

ORDER TO CEASE AND DESIST

It is ordered, That Samuel A. Mannis, an individual trading as Samuel A. Mannis and Co., and Furs By Mannis, or under any other trade name, and his 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 products" 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 items of information required by the Fur Products Labeling Act or the Rules and Regulations promulgated thereunder, in type of equal size and conspicuousness, and in close proximity with each other;

B. Sets forth earlier or former comparative prices without stating the time such prices were in effect.

2. Making claims and representations of the types covered by subsections (a), (b), (c), and (d) of Rule 44 of the Rules and Regulations promulgated under the Fur Products Labeling Act unless there are maintained by respondent full and adequate records disclosing the facts upon which such claims and representations are based.

Subsections (a), (b), (c), and (d) of Rule 44 of said Rules and Regulations provide as follows:

"(a) No person shall, with respect to a fur or fur product, advertise such fur or fur product at alleged wholesale prices or at alleged manufacturers cost or less, unless such representations are true in fact; nor shall any person advertise a fur or fur product at prices purported to be reduced from what are in fact fictitious prices, nor at a purported reduction in price when such purported reduction is in fact fictitious.

"(b) No person shall, with respect to a fur or fur product, advertise such fur or fur product with comparative prices and percentage savings claims except on the basis of current market values or unless the time of such compared price is given.

"(c) No person shall, with respect to a fur or fur product, advertise such fur or fur product as being 'made to sell for,' being 'worth' or 'valued at' a certain price, or by similar statements, unless such claim or representation is true in fact.

"(d) No person shall, with respect to a fur or fur product, advertise such fur or fur product as being of a certain value or quality unless such claims or representations are true in fact."

It is further ordered, That the 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.

Complaint

IN THE MATTER OF

KAISER INDUSTRIES CORPORATION ET AL.

ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 7 OF THE
CLAYTON ACT

Docket 8341. Complaint, Mar. 16, 1961—Decision, Aug. 2, 1963*

Order dismissing, as lacking public interest, complaint charging the second largest producer of steel in the Western States with violation of Sec. 7 of the Clayton Act by its acquisition of the largest independent fabricator and erector of structural steel in Arizona.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondents have violated, and are now violating, the provisions of Section 7 of the amended Clayton Act (U.S.C. Title 15, Sec. 18), hereby issues its complaint pursuant to Section 11 of the aforesaid Act (U.S.C. Title 15, Sec. 21), charging as follows:

PARAGRAPH 1. Respondent Kaiser Industries Corporation, hereinafter sometimes referred to as "Kaiser Industries", is a corporation organized and existing under the laws of the State of Nevada. It was incorporated on August 9, 1945, and has since undergone several name changes, its present name having been adopted on March 14, 1956. Its main office and principal place of business is located in the Kaiser Center, 300 Lakeside Drive, Oakland, California.

Respondent Henry J. Kaiser Company, hereinafter sometimes referred to as "Kaiser Company", is a corporation organized and existing under the laws of the State of Nevada. It was incorporated on December 30, 1941. Its main office and principal place of business is located in the Kaiser Center, 300 Lakeside Drive, Oakland, California.

Respondent Kaiser Aluminum & Chemical Corporation, hereinafter sometimes referred to as "Kaiser Aluminum" is a corporation organized and existing under the laws of the State of Delaware. It was incorporated on December 9, 1940, and has since undergone several name changes, its present name having been adopted on November 28, 1949. Its main office and principal place of business is located in the Kaiser Center, 300 Lakeside Drive, Oakland, California.

Respondent Kaiser Steel Corporation, hereinafter sometimes referred to as "Kaiser Steel", is a corporation organized and existing under the laws of the State of Nevada. It was incorporated December 1,

*As amended Jan. 9, 1962.