

BATTELSTEIN'S, INC.

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

Docket C-790. Complaint, July 16, 1964—Decision, July 16, 1964

Consent order requiring a Houston, Tex., retailer of fur and textile fiber products to cease violating the Fur Products Labeling Act by labeling fur products with excessive prices represented as former regular prices, labeling artificially colored furs as natural, and failing to disclose on labels the true animal name of fur, name of the manufacturer, etc., and when fur was natural; failing on labels and invoices to use the term "natural" for furs that were not dyed or bleached; failing in invoicing and advertising, to show when fur was artificially colored; failing to show the country of origin of imported

Complaint

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furs and naming animals other than those producing certain furs, in advertising; mutilating required labels prior to ultimate sale of fur products; and failing in other respects to comply with requirements of the Act; and to cease violating the Textile Fiber Products Identification Act by advertising textile products in newspapers without giving the fiber content, and by using fiber trademarks in advertising wearing apparel without a full disclosure of the fiber content information as required.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Battelstein's, Inc., 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 the Textile Fiber Products Identification 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 Battelstein's, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas.

Respondent is a retailer of fur products and textile fiber products with its office and principal place of business located at 812 Main Street, Houston, Texas.

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 furs which have 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 Section 4(1) of the Fur Products Labeling Act in that they were falsely and deceptively labeled or otherwise falsely and deceptively identified in that labels affixed to fur products contained representations, either directly or by implication, that the prices of fur products were reduced from the respondent's former prices and the amount of such purported reduction constituted savings to purchasers of respondent's fur products. In truth and in fact, the alleged former prices

were fictitious in that they were not actual, bona fide prices at which respondent offered the fur products to the public on a regular basis for a reasonably substantial period of time in the recent, regular course of business, and said fur products were not reduced in price as represented and savings were not afforded purchasers of respondent's said fur products as represented.

PAR. 4. Certain of said fur products were misbranded in that they were falsely and deceptively labeled to show that fur contained therein was natural, when in fact such fur was pointed, bleached, dyed, tip-dyed, or otherwise artificially colored, in violation of Section 4(1) of the Fur Products Labeling Act.

PAR. 5. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

Among such misbranded fur products, but not limited thereto, were fur products with labels which failed:

1. To show the true animal name of the fur used in the fur product.
2. To disclose that the fur contained in the fur product was bleached, dyed, or otherwise artificially colored when such was the fact.
3. To show the name, or other identification issued and registered by the Commission, of one or more of the persons who manufactured such fur product for introduction into commerce, introduced it into commerce, sold it in commerce, advertised or offered it for sale, in commerce, or transported or distributed it in commerce.

PAR. 6. 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 "Natural" was not used on labels to describe fur products which were not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored, in violation of Rule 19(g) 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 not completely set out on one side of labels, 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 set forth in handwriting on labels, in violation of Rule 29(b) of said Rules and Regulations.

(d) 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 the said Rules and Regulations.

(e) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth separately on labels with respect to each section of fur products composed of two or more sections containing different animal furs, in violation of Rule 36 of said Rules and Regulations.

(f) Required item numbers were not set forth on labels, in violation of Rule 40 of said Rules and Regulations.

PAR. 7. Certain of said fur products were falsely and deceptively invoiced by the respondent in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated under such Act.

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products covered by invoices which failed to show the true animal name of the fur used in the fur product.

PAR. 8. 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 the following respects:

(a) Information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth on invoices in abbreviated form, in violation of Rule 4 of said Rules and Regulations.

(b) The term "Natural" was not used on invoices to describe fur products which were not pointed, bleached, dyed, tip-died or otherwise artificially colored, in violation of Rule 19(g) of said Rules and Regulations.

(c) Required item numbers were not set forth on invoices, in violation of Rule 40 of said Rules and Regulations.

PAR. 9. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that certain advertisements intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of such fur products were not in accordance with the provisions of Section 5(a) of the said Act.

Among and included in the aforesaid advertisements, but not limited thereto, were advertisements of respondent which appeared in issues of the Houston Chronicle, a newspaper published in the city of Houston, State of Texas.

Among such false and deceptive advertisements, but not limited thereto, were advertisements which failed:

1. To show that the fur contained in the fur product was bleached, dyed or otherwise artificially colored when such was the fact.
2. To show the country of origin of imported furs contained in fur products.

PAR. 10. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondent falsely and deceptively advertised fur products in that certain of said advertisements contained the name or names of an animal or animals other than those producing the fur contained in the fur product, in violation of Section 5(a) (5) of the Fur Products Labeling Act.

PAR. 11. Respondent falsely and deceptively advertised fur products by affixing labels thereto which represented, either directly or by implication, that prices of such fur products were reduced from the respondent's former prices and the purported reduction constituted savings to purchasers of respondents fur products. In truth and in fact the alleged former prices were fictitious in that they were not the actual, bona fide prices at which the respondent offered the fur products to the public on a regular basis for a reasonably substantial period of time in the recent, regular course of business, and the said fur products were not reduced in price as represented and the represented savings were not thereby afforded to purchasers, in violation of Section 5(a) (5) of the Fur Products Labeling Act and Rule 44(a) of the Rules and Regulations.

PAR. 12. Respondent has mutilated and has caused and participated in the mutilation of, prior to the time fur products subject to the provisions of the Fur Products Labeling Act were sold and delivered to the ultimate consumer, labels required by the Fur Products Labeling Act to be affixed to such products, in violation of Section 3(d) of said Act.

PAR. 13. Subsequent to the effective date of the Textile Fiber Products Identification Act on March 3, 1960, respondent has been and is now engaged in the introduction, delivery for introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, and in the importation into the United States, of textile fiber products; and has sold, offered for sale, advertised, delivered, transported and caused to be transported, textile fiber products, which have been advertised or offered for sale in commerce; and has sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products, either in their original state or contained in

other textile fiber products; as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

PAR. 14. Certain of said textile products were falsely and deceptively advertised in that respondent in making disclosures or implications as to the fiber content of such textile fiber products in written advertisements used to aid, promote, and assist, directly or indirectly, in the sale or offering for sale, of said products, failed to set forth the required information as to fiber content as provided for by Section 4(c) of the Textile Fiber Products Identification Act and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

Among and included in the aforesaid advertisements, but not limited thereto, were advertisements of respondent which appeared in issues of the Houston Chronicle, a newspaper published in the City of Houston, State of Texas.

Among such falsely and deceptively advertised textile fiber products, but not limited thereto, were articles of wearing apparel which were advertised with fiber implying terms such as "Gabardine," "Broadcloth," "Dacron," "Corduroy," "Oxford" and "Pima," without setting forth the aforesaid required information.

PAR. 15. Certain of said textile fiber products were falsely and deceptively advertised in violation of the Textile Fiber Products Identification Act in that they were not advertised in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Fiber trademarks were used in advertising textile fiber products, namely articles of wearing apparel, without a full disclosure of the fiber content information required by the said Act and the Rules and Regulations thereunder in at least one instance in said advertisement, in violation of Rule 41(a) of the aforesaid Rules and Regulations.

(b) Fiber trademarks were used in advertising textile fiber products, namely articles of wearing apparel, containing more than one fiber and such fiber trademarks did not appear in the required fiber content information in immediate proximity and conjunction with the generic names of the fibers in plainly legible type or lettering of equal size and conspicuousness, in violation of Rule 41(b) of the aforesaid Rules and Regulations.

PAR. 16. 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 the Textile Fiber Products Identification Act and the Rules and Regulations promul-

gated thereunder and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of the Federal Trade Commission Act, the Fur Products Labeling Act and the Textile Fiber Products Identification Act, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, and admission by respondent of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Battelstein's, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 812 Main Street, Houston, Texas.

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

ORDER

It is ordered, That respondent Battelstein's, Inc., a corporation, and its officers, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur products; or in connection with the sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in com-

merce, as the terms "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. Representing directly or by implication, on labels, that any amount, whether accompanied or not by descriptive terminology, is the respondent's former price of fur products when such amount is in excess of the actual, bona fide price at which respondent offered the fur products to the public on a regular basis for a reasonably substantial period of time in the recent, regular course of business.

2. Misrepresenting in any manner on labels or other means of identification the savings available to purchasers of respondent's fur products.

3. Falsely or deceptively representing in any manner, directly or by implication, on labels or other means of identification that prices of respondent's fur products are reduced.

4. Representing directly or by implication on labels that the fur contained in any fur product is natural when the fur contained therein is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

5. Failing to affix labels to fur products showing in words and in figures plainly legible all of the information required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.

6. Failing to set forth the term "Natural" as part of the information required to be disclosed on labels under the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe fur products which are not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

7. Failing to completely set out information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations thereunder on one side of the labels affixed to fur products.

8. Setting forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in handwriting on labels affixed to fur products.

9. Failing to set forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder on labels in the sequence required by Rule 30 of the aforesaid Rules and Regulations.

10. Failing to set forth separately on labels attached to fur products composed of two or more sections containing different animal fur the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder with respect to the fur comprising each section.

11. Failing to set forth on labels the item number or mark assigned to a fur product.

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 in each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

2. 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.

3. Failing to set forth the term "Natural" as part of the information required to be disclosed on invoices under the Fur Products Labeling Act and Rules and Regulations promulgated thereunder to describe fur products which are not pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

4. Failing to set forth on invoices the item number or mark assigned to fur products.

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 any fur product, and which:

1. Fails to set forth in words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 5(a) of the Fur Products Labeling Act.

2. Sets forth the name or names of any animal or animals other than the name of the animal producing the furs contained in the fur product as specified in the Fur Products Name Guide, and as prescribed by the Rules and Regulations.

3. Represents, directly or by implication, that any price, whether accompanied or not by descriptive terminology is the respondent's former price of fur products when such amount is in excess of the actual, bona fide price at which respondent offered the fur products to the public on a regu-

lar basis for a reasonably substantial period of time in the recent, regular course of business.

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

5. Falsely or deceptively represents in any manner that prices of respondent's fur products are reduced.

It is further ordered, That respondent Battelstein's, Inc., a corporation, and its officers and respondent's representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from mutilating or causing or participating in the mutilation of, prior to the time any fur product subject to the provisions of the Fur Products Labeling Act is sold and delivered to the ultimate consumer, any label required by the said Act to be affixed to such fur product.

It is further ordered, That respondent Battelstein's, Inc., a corporation, and its officers, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Falsely and deceptively advertising textile fiber products by:

1. Making any representations, by disclosure or by implication, as to the fiber content of any textile fiber product in any written advertisement which is used to aid, promote, or assist, directly or indirectly, in the sale or offering for sale of such textile fiber product, unless the same information required to be shown on the stamp, tag, label or other means of identification under Sections 4(b)(1) and (2) of the Textile Fiber Products Identification Act is contained in the said advertisement, except that the percentages of the fibers present in the textile fiber product need not be stated.

2. Using a fiber trademark in advertisements without a full disclosure of the required content information in at least one instance in the said advertisement.

3. Using a fiber trademark in advertising textile fiber products containing more than one fiber without such fiber trademark appearing in the required fiber content information in immediate proximity and conjunction with the generic name of the fiber in plainly legible type or lettering of equal size and conspicuousness.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.