

...the parties involved, and the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Commissioner Elman's views on the scope of the order are set forth in a separate opinion. Commissioner Jones did not participate for the reason that oral argument was heard prior to her taking the oath of office.

IN THE MATTER OF
HERZBERGS, INC., ET AL

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

Docket C-909. Complaint, June 18, 1965—Decision, June 18, 1965

Consent order requiring Omaha, Nebr., retailers to cease misbranding its fur, wool, and textile fiber products, deceptively invoicing fur products, falsely advertising fur and textile products, removing required labels, and failing to keep adequate records.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Fur Products Labeling Act, the Textile Fiber Products Identification Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Herzbergs, Inc., a corporation, and David Goldman and Richard Goldman, individually and as officers of the said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, the Textile Fiber Products Identification Act and the Wool Products Labeling Act of 1939, 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 Herzbergs, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nebraska.

Respondents David Goldman and Richard Goldman are officers of the corporate respondent and formulate, direct and control the

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under was set forth on invoices in abbreviated form, in violation of Rule 4 of said Rules and Regulations.

(b) The term "Persian Lamb" was not set forth on invoices in the manner required by law, in violation of Rule 8 of said Rules and Regulations.

(c) The term "Natural" was not used on invoices 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.

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

PAR. 8. 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 advertisements, but not limited thereto, were advertisements of respondents which appeared in issues of the World Herald, a newspaper published in the city of Omaha, State of Nebraska.

Among such falsely and deceptively advertised fur products, but not limited thereto, were advertisements which failed to show the country of origin of imported furs contained in fur products.

PAR. 9. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondents falsely and deceptively advertised fur products in that certain of said fur products were falsely or deceptively identified with respect to the name or designation of the animal or animals that produced the fur from which the said fur products had been manufactured, in violation of Section 5(a)(5) of the Fur Products Labeling Act.

Among such falsely and deceptively advertised fur products, but not limited thereto, were fur products advertised as "Broadtail" thereby implying that the furs contained therein were entitled to the designation "Broadtail Lamb" when in truth and in fact they were not entitled to such designation.

PAR. 10. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondents falsely and deceptively advertised fur products in violation of the Fur Products Labeling Act in that the said fur products were not advertised in accordance with the Rules and Regulations promulgated thereunder inasmuch as the term "natural" was not used

(b) The term "Persian Lamb" was not set forth on labels in the manner required by law, in violation of Rule 8 of said Rules and Regulations.

(c) The term "Dyed Mouton Lamb" was not set forth on labels in the manner required by law, in violation of Rule 9 of said Rules and Regulations.

(d) 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.

(e) Labels affixed to fur products did not comply with the minimum size requirements of one and three-quarter inches by two and three-quarter inches, in violation of Rule 27 of said Rules and Regulations.

(f) 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.

(g) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth in the required sequence, in violation of Rule 30 of said Rules and Regulations.

(h) 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.

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

PAR. 6. Certain of said fur products were falsely and deceptively invoiced by respondents in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated under such Act.

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

PAR. 7. 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 there-

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identified as to the name or amount of the constituent fibers contained therein.

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products with labels which contained conflicting information, as for example; one label affixed to the textile fiber product designated the fiber content information as "70% Acetate, 30% Rayon" whereas another label affixed to the same product designated the fiber content as "77% Acetate, 23% Rayon."

PAR. 16. Certain of said textile fiber products were misbranded by respondents in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products which were not labeled to show in words and figures plainly legible; (1) the true generic names of the constituent fibers present in the textile fiber products; (2) the percentage of each such fibers; and (3) the terms "other fiber" or "other fibers" to designate any fiber or group of fibers present in the amount of 5 percentum or less.

PAR. 17. Certain of said textile fiber products were misbranded by the respondents, in violation of the Textile Fiber Products Identification Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

1. Information required under Section 4(b) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder was set forth on labels with the Foreign name of the fiber instead of the English name of the fiber, in violation of Rule 4 of said Rules and Regulations.

2. Information required under Section 4(b) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder were set forth in handwriting on labels, in violation of Rule 16(b) of the aforesaid Rules and Regulations.

3. Information required under Section 4(b) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder was not set forth conspicuously and in a manner clearly legible and readily accessible to the prospective purchasers, in violation of Rule 16(b) of the aforesaid Rules and Regulations.

to describe fur products which were not pointed, bleached, dyed, tip-dyed or otherwise artificially colored, in violation of Rule 19(g) of the said Rules and Regulations.

PAR. 11. Respondents in introducing, selling, advertising, and offering for sale, in commerce, and in processing for commerce, fur products; and in selling, advertising, offering for sale and processing fur products which have been shipped and received in commerce, have misbranded such fur products by substituting thereon, labels which did not conform to the requirements of Section 4 of the Fur Products Labeling Act, for the labels affixed to said fur products by the manufacturer or distributor pursuant to Section 4 of said Act, in violation of Section 3(e) of said Act.

PAR. 12. Respondents in substituting labels as provided for in Section 3(e) of the Fur Products Labeling Act have failed to keep and preserve the records required, in violation of said Section 3(e) and Rule 41 of the Rules and Regulations promulgated under the said Act.

PAR. 13. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce under the Federal Trade Commission Act.

PAR. 14. Subsequent to the effective date of the Textile Fiber Products Identification Act on March 3, 1960, respondents have been and are 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 have 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 have 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. 15. Certain of said textile fiber products were misbranded by respondents within the intent and meaning of Section 4(a) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, invoiced, advertised, or otherwise

to keep and preserve the records required, in violation of Section 6(b) of the Textile Fiber Products Identification Act.

PAR. 21. 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. 22. The acts and practices of respondents as set forth above were, and are, in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

PAR. 23. Subsequent to the effective date of the Wool Products Labeling Act of 1939, respondents have introduced into commerce, sold, transported, distributed, delivered for shipment, and offered for sale in commerce, wool products, as "commerce" and "wool product" are defined in said Act.

PAR. 24. Certain of said wool products were misbranded by respondents in that they were not stamped, tagged or labeled as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded wool products, but not limited thereto, were wool products with labels which failed to disclose the percentage of the fibers present in the wool products.

PAR. 25. Respondents with the intent of violating the provisions of the Wool Products Labeling Act of 1939 have removed and mutilated or caused or participated in the removal and mutilation of the

4. Fiber trademarks were placed on labels without the generic names of the fiber appearing on such labels, in violation of Rule 17(a) of the aforesaid Rules and Regulations.

5. Fiber trademarks were placed on labels without full and complete fiber content disclosure the first time the generic name or fiber trademark appeared on the label, in violation of Rule 17(b) of the aforesaid Rules and Regulations.

6. Samples, swatches or specimens of textile fiber products used to promote or effect sales of such textile fiber products were not labeled to show the information required under Section 4(b) of the Textile Fiber Products Identification Act, in violation of Rule 21(a) of the aforesaid Rules and Regulations.

PAR. 18. Certain of said textile fiber products were falsely and deceptively advertised in that respondents in making disclosures or implications as to fiber content of such textile fiber products in written advertisements used to aid, promote, and assist, directly or indirectly, in the 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 under said Act.

Among and included in the aforesaid advertisements but not limited thereto, were advertisements of respondents which appeared in issues of the World Herald, a newspaper published in the city of Omaha, State of Nebraska.

Among such falsely and deceptively advertised textile fiber products, but not limited thereto, were articles of wearing apparel which were advertised without a disclosure as to the true generic names of the constituent fibers present in the textile fiber products, and articles of wearing apparel which were advertised with fiber implying terms such as "crepe," "orlon," "velveteen" and "satin," without setting forth the aforesaid information.

PAR. 19. After certain textile fiber products were shipped in commerce, respondents have removed and mutilated, and have caused and participated in the removal and mutilation of, the stamp, tag, label or other identification required by the Textile Fiber Products Identification Act to be affixed to such products, prior to the time such textile fiber products were sold and delivered to the ultimate consumer, in violation of Section 5(a) of said Act.

PAR. 20. Respondents in substituting labels pursuant to Section 5(b) of the Textile Fiber Products Identification Act have failed

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

ORDER

It is ordered, That respondents Herzbergs, Inc., a corporation, and its officers, and David Goldman and Richard Goldman, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising or offering for sale in commerce; or the transportation or distribution in commerce, of any fur product; 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 commerce, 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. Failing to affix labels to fur products showing in words and 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.

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

3. Failing to set forth the term "Persian Lamb" on labels in the manner required where an election is made to use that term instead of the word "Lamb."

4. Failing to set forth the term "Dyed Mouton Lamb" on labels in the manner required where an election is made to use that term instead of the term "Dyed Lamb."

5. 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.

6. Affixing to fur products labels that do not comply with the minimum size requirements of one and three-quarter inches by two and three-quarter inches.

stamp, tag, label or other identification required by the Wool Products Labeling Act of 1939 to be affixed to wool products subject to the provisions of such Act, prior to the time such wool products were sold and delivered to the ultimate consumer, in violation of Section 5 of said Act.

PAR. 26. The acts and practices of the respondents as set forth above were, and are, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted and now constitute, unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, the Fur Products Labeling Act, the Wool Products Labeling Act of 1939 and the Textile Fiber Products Identification Act, and the respondents 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 respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents 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 respondents 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 Herzbergs, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nebraska, with its office and principal place of business located at 1519 Douglas, Omaha, Nebraska.

Respondents David Goldman and Richard Goldman are officers of the corporate respondent and their address is the same as that of the corporate respondent.

rectly 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. Falsely or deceptively identifies any such fur product as to the name or designation of the animal or animals that produced the fur contained in the fur product.
3. Fails to set forth the term "natural" as part of the information required to be disclosed in advertisements 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.

It is further ordered, That Herzbergs, Inc., a corporation, and its officers, and David Goldman and Richard Goldman, individually and as officers of the said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from removing and mutilating, or causing or participating in the removal and 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 said Act to be affixed to such fur product.

It is further ordered, That Herzbergs, Inc., a corporation, and its officers, and David Goldman and Richard Goldman, individually and as officers of the said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, sale, advertising or offering for sale, in commerce, or the processing for commerce, of fur products; or in connection with the selling, advertising, offering for sale or processing of fur products which have been shipped and received in commerce, do forthwith cease and desist from:

A. Misbranding fur products by substituting for the labels affixed to such fur products pursuant to Section 4 of the Fur Products Labeling Act labels which do not conform to the requirements of the aforesaid Act and the Rules and Regulations promulgated thereunder.

B. Failing to keep and preserve the records required by the Fur Products Labeling Act and the Rules and Regulations pro-

7. 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.

8. 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.

9. 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.

10. 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 as the term "invoice" is defined in the Fur Products Labeling Act showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

2. Setting forth 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 "Persian Lamb" in the manner required where an election is made to use that term instead of the word "Lamb."

4. 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.

5. 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, di-

conspicuously and in a manner clearly legible and readily accessible to the prospective purchasers.

6. Using a fiber trademark on labels affixed to such textile fiber products without the generic name of the fiber appearing on such label.

7. Using a generic name or fiber trademark on any label whether required or non-required, without making a full and complete fiber content disclosure in accordance with the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder the first time such generic name or fiber trademark appears on the label.

8. Failing to affix labels to sample textile fiber products used to promote or effect sales of textile fiber products showing in a clear, legible and conspicuous manner each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

B. 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 Section 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 respondents Herzbergs, Inc., a corporation, and its officers, and David Goldman and Richard Goldman, individually and as officers of the said corporation, and respondents' representatives, agents and employees, directly or through any

mulgated thereunder in substituting labels as permitted by Section 3(e) of the said Act.

It is further ordered, That respondents Herzbergs, Inc., a corporation, and its officers, and David Goldman and Richard Goldman, individually and as officers of the said corporation, and respondents' 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. Misbranding textile fiber products by:

1. Falsely or deceptively stamping, tagging, labeling, invoicing, advertising, or otherwise identifying such products as to the name or amount of constituent fibers contained therein.

2. Failing to affix labels to such textile fiber products showing in a clear, legible and conspicuous manner each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

3. Setting forth on labels information required under Section 4(b) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder in a Foreign language instead of the English language.

4. Setting forth information required under Section 4(b) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder in handwriting on labels affixed to textile fiber products.

5. Failing to set forth information required under Section 4(b) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder

