

Complaint

75 F.T.C.

IN THE MATTER OF

MINK RANCH DISTRIBUTORS, INC., ET AL.

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

Docket C-1478. Complaint, Jan. 17, 1969—Decision, Jan. 17, 1969

Consent order requiring a Philadelphia, Pa., retail furrier to cease falsely advertising, deceptively invoicing and using bait tactics in the sale of its fur products.

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 Mink Ranch Distributors, Inc., a corporation, and Bernard Kirschner and Seymour Himmel, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PAR. 1. Respondent Mink Ranch Distributors, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania. Respondents Bernard Kirschner and Seymour Himmel are officers of the corporate respondent. They formulate, direct and control the acts, practices and policies of the said corporate respondent including those hereinafter set forth.

Respondents are retailers of fur products with their office and principal place of business located at 1211 Chestnut Street, Philadelphia, Pennsylvania.

PAR. 2. Respondents are now and for some time last past have been engaged in the introduction into commerce, and in the sale, advertising, and offering for sale in commerce, and in the transportation and distribution in commerce, of fur products; and have sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of 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 falsely and deceptively invoiced by the 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 covered by invoices which failed to show the true animal name of the fur used in such fur product.

PAR. 4. 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) 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.

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

PAR. 5. 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 respondents which appeared in issues of the Philadelphia Daily News, a newspaper published in the city of Philadelphia, State of Pennsylvania and having a wide circulation in Pennsylvania and other States of the United States.

By means of the aforesaid advertisements and other advertisements of similar import and meaning not specifically referred to herein, respondents falsely and deceptively advertised fur products, in violation of Section 5(a)(5) of the Fur Products Labeling Act by representing, directly or by implication, through such statements as "Because we are able to buy DIRECT from Mink Ranches and sell DIRECT to you, most middleman profits have been eliminated * * * and you save \$ \$ \$" that all the products marketed at retail by the respondents are purchased by them directly from mink ranches, middleman profits are thereby eli-

minated, and therefore, purchasers of respondents' fur products are afforded savings on such fur products not obtainable in the usual retail channels of trade.

In truth and in fact, respondents purchase their said products from sources other than mink ranches, namely manufacturers and wholesalers of fur products. Respondents do not purchase directly from mink ranches the products marketed at retail by them, middleman profits are not eliminated, and savings are not thereby afforded to purchasers of such products as represented.

PAR. 6. 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 said advertisements represented, directly or by implication, that fur products were guaranteed without disclosing the nature and extent of the guarantee and the manner and form in which the guarantee would perform thereunder, in violation of Section 5(a)(5) of the Fur Products Labeling Act.

PAR. 7. 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 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. 8. The aforesaid acts and practices of respondents, as alleged above, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

PAR. 9. In the course and conduct of their business, and for the purpose of inducing the purchase of their fur products, the respondents have picturized certain fur products and made statements and representations with respect thereto in advertisements inserted in the aforementioned newspaper. Typical and illustrative, but not limited thereto, are the following statements and representations:

Mink stole yours today for the incredibly low price of \$165—your choice of three lovely colors . . . Pastel, Ranch or Silverblue—call BA 9-4900 for a

free "Fur Fashion show" in your home now! Dial BA 9-4900 to see these Mink skins right in your own living room without cost or obligation.

PAR. 10. By and through the use of the aforesaid statements and representations, and other statements and representations of similar import and meaning, not specifically referred to herein the respondents represented directly or by implication that they were making a bona fide offer to sell the advertised fur products at the prices specified in the advertisements.

PAR. 11. In truth and in fact the respondents' offers were not bona fide offers to sell the said fur products at advertised prices, but were made for the purpose of obtaining leads and information as to persons interested in the purchase of the fur products. After obtaining leads through responses to such advertisements and calling upon such persons, the respondents, their salesmen and representatives made no effort to sell the advertised fur products at the advertised price, but, instead, did not possess the advertised fur products at the time of the call and disparaged the advertised fur products in such a manner as to discourage their purchase and attempted to, and did, sell much higher priced fur products.

PAR. 12. In the course and conduct of their business, respondents used the name of the corporate respondent "Mink Ranch Distributors, Inc.," in advertisements inserted in the aforementioned newspaper and on invoices issued to purchasers of their fur products.

PAR. 13. By and through the use of the said corporate name, Mink Ranch Distributors, Inc., respondents represented, directly or by implication, that they are distributors of mink fur products procured directly from mink ranches. In truth and in fact, respondents do not procure their mink products from mink ranches but procure their fur products in the usual channels of trade from sources other than mink ranches, namely, manufacturers and wholesalers of fur products.

PAR. 14. In the conduct of their business at all times mentioned herein, the respondents have been in substantial competition in commerce, with corporations and individuals in the sale of fur products of the same general kind and nature as those sold by the respondents.

PAR. 15. The use by the respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mis-

taken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 16. The aforesaid acts and practices of respondents as set forth in Paragraphs Nine through Fifteen were and are false, misleading and deceptive and all to the prejudice and injury of the public and of the respondents' competitors, and constituted, and now constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Fur Products Labeling Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, 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 alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record and having duly considered the comment filed thereafter pursuant to § 2.34(b) of its Rules, now, in further conformity with the procedure prescribed in § 2.34 (b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Mink Ranch Distributors, Inc., is a corporation

organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 1211 Chestnut Street, Philadelphia, Pennsylvania.

Respondents Bernard Kirschner and Seymour Himmel are officers of said corporation and their address is the same as that of said corporation.

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 Mink Ranch Distributors, Inc., a corporation, and its officers, and Bernard Kirschner, and Seymour Himmel, 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. Falsely or deceptively invoicing any fur product by:

1. Failing to furnish an invoice, 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. Failing to set forth the term "natural" as part of the information required to be disclosed on an invoice under the Fur Products Labeling Act and Rules and Regulations promulgated thereunder to describe such fur product which is not pointed, bleached, dyed, tipped, or otherwise artificially colored.

3. Failing to set forth on an invoice the item number or mark assigned to such fur product.

B. Falsely or deceptively advertising any fur product 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 such fur product, and which:

1. Represents, directly or by implication, through such words and phrases as "Because we are able to buy DIRECT from Mink Ranches and sell DIRECT to you, most middleman profits have been eliminated * * * and you save \$ \$ \$" or words or phrases of similar import and meaning or in any other manner that the products marketed at retail by the respondents are purchased by them directly from mink ranches.

2. Misrepresents in any manner that middleman profits are eliminated from the sale of such product.

3. Falsely or deceptively represents that savings are afforded to the purchaser of any such fur product or misrepresents in any manner the amount of savings afforded to the purchaser of such fur product.

4. Represents, directly or by implication, that such fur product is guaranteed unless all the terms and conditions of the guarantee, including its nature and extent, the name and address of the guarantor and the manner and form in which the guarantor will perform thereunder are clearly and conspicuously disclosed in immediate conjunction therewith.

5. 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 such fur product which is not pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

It is further ordered, That respondents Mink Ranch Distributors, Inc., a corporation, and its officers, and Bernard Kirschner and Seymour Himmel, 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 advertising, offering for sale, sale or distribution of fur products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Advertising or offering any products for sale for the purpose of obtaining leads or prospects for the sale of different products, unless the respondents maintain an adequate

and readily available stock of the products advertised and offered for sale.

2. Disparaging in any manner or refusing to sell any product advertised.

3. Using any advertising, sales plan or procedure involving the use of false, deceptive or misleading statements or representations which are designed to obtain leads or prospects for the sale of other merchandise.

4. Representing, directly or indirectly, that any products are offered for sale when such offer is not a bona fide offer to sell said products:

5. Using the corporate name "Mink Ranch Distributors, Inc."; or representing, through the use of any other name or names, corporate or otherwise, or in any other manner, that respondents are distributors of mink products procured directly from mink ranches.

6. Misrepresenting in any manner that respondents are engaged in the manufacture of fur products or the sale of fur products at wholesale.

It is further ordered, That respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That 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.

IN THE MATTER OF

WESTERN STAR BEEF, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT