

IN THE MATTER OF

M. REINER & SONS, INC., ET AL.

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

Docket 8806. Complaint, Dec. 10, 1969—Decision, June 24, 1970

Order requiring a New York City manufacturing furrier to cease misbranding,
falsely invoicing and deceptively guaranteeing 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 M. Reiner & Sons, Inc., a corporation, and Jack J. Reiner and Seymour Reiner, 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:

PARAGRAPH 1. Respondent M. Reiner & Sons, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondents Jack J. Reiner and Seymour Reiner 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 manufacturers of fur products with their office and principal place of business located at 345 Seventh Avenue, New York, New York.

PAR. 2. Respondents are now, and for some time last past have been engaged in the introduction into commerce, and in the manufacture for 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 manufactured for sale, 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 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. 4. 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 to disclose that the fur contained in the fur products was bleached, dyed, or otherwise artificially colored, when such was the fact.

PAR. 5. 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 disclose that the fur contained in the fur products was bleached, dyed, or otherwise artificially colored, when such was the fact.

PAR. 6. Certain of said fur products were falsely and deceptively invoiced in that said fur products were invoiced to show that the fur contained therein was natural, when in fact such fur was pointed, bleached, dyed, tip-dyed or otherwise artificially colored, in violation of Section 5(b)(2) of the Fur Products Labeling Act.

PAR. 7. Respondents furnished false guaranties under Section 10(b) of the Fur Products Labeling Act with respect to certain of their fur products by falsely representing in writing that respond-

Initial Decision

77 F.T.C.

ents had a continuing guaranty on file with the Federal Trade Commission when respondents in furnishing such guaranties had reason to believe that the fur products so falsely guaranteed would be introduced, sold, transported and distributed in commerce, in violation of Rule 48(c) of said Rules and Regulations under the Fur Products Labeling Act and Section 10(b) of said Act.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged in Paragraphs Three through Seven 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.

Mr. Frank W. Vanderheyden supporting the complaint.

Mr. Joseph H. Schindler, New York, N.Y., for respondents.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

MARCH 31, 1970

PRELIMINARY STATEMENT

This is a proceeding brought under the Fur Products Labeling Act¹ by the issuance of a Federal Trade Commission complaint dated December 10, 1969.

¹ The sections of the Fur Products Labeling Act (15 U.S.C. § 69) involved, are as follows:

Sec. 4. For the purposes of this Act, 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;

(2) if there is not affixed to the fur product a label showing in words and figures plainly legible—

(A) the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to section 7(c) of this Act;

(B) that the fur product contains or is composed of used fur, when such is the fact;

(C) that the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

(D) that the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur when such is the fact;

(E) the name, or other identification issued and registered by the Commission, of one or more of the persons who manufacture such fur product for introduction into commerce, introduce it into commerce, sell it in commerce, advertise or offer it for sale in commerce, or transport or distribute it in commerce;

(F) the name of the country of origin of any imported furs used in the fur product;

Sec. 5. (b) For the purpose of the Act, a fur product or fur shall be considered to be falsely or deceptively invoiced—

Footnote continued on following page.

The Pleadings

The complaint charged the respondents with mislabeling, improperly invoicing, and misbranding certain fur products and with falsely representing that they had filed a continuing guarantee with the Federal Trade Commission. Respondents in their answer filed January 21, 1970, by Joseph H. Schindler admitted the formal allegations respecting their incorporation of the corporation, the relationship of the individual respondents thereto, the nature of the business, and the fact that they were engaged in interstate commerce. They denied the balance of the allegations of the complaint.

Prehearing Matters

The following prehearing events took place.

On December 31, 1969, complaint counsel moved for a prehearing conference and attached to his motion 44 exhibits that constituted the documentary evidence he intended to offer.

On January 26, 1970, a prehearing conference was held at Washington, D.C., and a prehearing order was dictated into the transcript (Tr. 16-17),² and on January 29, 1970, respondents filed certain admissions.

On February 4, 1970, respondents moved for leave to settle the proceedings by consent order. This motion, which was certified to

Footnote continued from previous page.

(1) if such fur product or fur is not invoiced to show—

(A) the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to section 7(c) of this Act;

(B) that the fur product contains or is composed of used fur, when such is the fact;

(C) that the fur product contains or is composed of bleached, dyed or otherwise artificially colored fur, when such is the fact;

(D) that the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact;

(E) the name and address of the person issuing such invoice;

(F) the name of the country of origin of any imported furs or those contained in a fur product;

(2) if such invoice contains the name or names of any animal or animals other than the name or names specified in paragraph (1)(A) of this subsection, or contains any form of misrepresentation or deception, directly or by implication, with respect to such fur product or fur.

Sec. 10. (b) It shall be unlawful for any person to furnish, with respect to any fur product or fur, a false guaranty (except a person relying upon a guaranty to the same effect received in good faith signed by and containing the name and address of the person residing in the United States by whom the fur product or fur guaranteed was manufactured or from whom it was received) with reason to believe the fur product or fur falsely guaranteed may be introduced, sold, transported, or distributed in commerce, and any person who violates the provisions of this subsection is guilty of an unfair method of competition, and an unfair or deceptive act or practice, in commerce within the meaning of the Federal Trade Commission Act.

² Transcript references are abbreviated Tr. and Commission Exhibits, CX.

Initial Decision

77 F.T.C.

the Commission by the undersigned, was denied by the Commission by order dated February 24, 1970.

Great Lakes Mink Association, on February 26, 1970, filed a petition to intervene on the certification. Its application was not received until after the Commission had acted.

Both parties at first agreed that there were unusual circumstances requiring hearings in Washington, D.C., and Cleveland, Ohio, on March 16 and 18, 1970. The unusual circumstances were later ameliorated. By order dated March 5, 1970, and based on consent, all formal hearings were scheduled for March 16, 1970, at Washington, D.C. Hearings were thereafter rescheduled for March 25, 1970, at respondents' request due to the peremptory setting of a civil court case for respondents' attorney in New York, New York.

On March 24, 1970, in the afternoon, respondents' counsel in a three-way telephone conversation stated that he and his clients would not appear at the hearings.

The Hearings

Hearings were convened at Room 7314, 1101 Pennsylvania Avenue, NW., Washington, D.C., at 10 A.M., March 25, 1970, and were concluded at 1:30 P.M. the same day. Six witnesses were called and 12 exhibits were received in evidence.

Two retail fur dealers doing business in Washington, D.C., each identified invoices from respondents evidencing the shipment of furs, and they also identified the labels attached to such furs. Each testified that neither the furs nor the documents had been altered. Each also testified that sample hairs had been extracted from these garments by an investigator for the Commission and had been placed by the investigator in an envelope and sealed in the presence of the retailer. The investigator testified that he had transmitted the invoices and the envelopes to the Bureau of Textiles and Furs of the Federal Trade Commission for testing. Custody was accounted for by a statement from the attorney who had received them and had turned them over to the laboratory. Thereafter, two laboratory technicians testified on the basis of their test reports (CX 3, 8, 36) that they had tested the hairs and had found the presence of an organic dye establishing that the descriptions contained on the labels, (CX 4, 6, and 34) and on the invoices (CX 1, 5, and 33) were incorrect. The invoices (CX 1, 5 and 33) contain the statement that a continuing guarantee of compliance with the Fur Products Labeling Act has been filed with the Federal Trade Commission. The custodian of

the records of continuing guarantees testified that no such guarantee had ever been filed by respondents.

After hearing the testimony described, the hearing examiner stated that additional evidence would be cumulative. Accordingly, complaint counsel did not offer prehearing exhibits marked for identification and numbered 9-32 and 37-44.

At the conclusion of the hearing, complaint counsel waived the filing of proposed findings.

Basis of Decision

On the testimony and the exhibits to which reference has been made as the principal supporting items of evidence and on his observation of the demeanor of the witnesses called by complaint counsel, respondents' having declined to appear, the hearing examiner makes the following findings of fact, conclusions and order:

FINDINGS OF FACT

1. Respondent M. Reiner & Sons, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. (Admitted.)
2. Respondents Jack J. Reiner and Seymour Reiner 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. (Admitted.)
3. Respondents are manufacturers of fur products with their office and principal place of business located at 345 Seventh Avenue, New York, New York. (Admitted.)
4. Respondents are now, and for some time last past have been engaged in the introduction into commerce, and in the manufacture for 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 manufactured for sale, 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. (Admitted.)
5. 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-

Initial Decision

77 F.T.C.

dyed, or otherwise artificially colored, in violation of Section 4(1) of the Fur Products Labeling Act. (CX 4, 6, 34; CX 3, 8, 36.)

6. 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. (CX 4, 6, 34.)

7. Among such misbranded fur products, but not limited thereto, were fur products with labels which failed to disclose that the fur contained in the fur products was bleached, dyed, or otherwise artificially colored, when such was the fact. (CX 4, 6, 34; CX 3, 8, 36.)

8. 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. (CX 1, 5, 33; CX 3, 8, 36.)

9. Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products covered by invoices which failed to disclose that the fur contained in the fur products was bleached, dyed, or otherwise artificially colored, when such was the fact. (CX 1, 5, 33; CX 3, 8, 36.)

10. Certain of said fur products were falsely and deceptively invoiced in that said fur products were invoiced to show that the fur contained therein was natural, when in fact such fur was pointed, bleached, dyed, tip-dyed or otherwise artificially colored, in violation of Section 5(b)(2) of the Fur Products Labeling Act. (CX 1, 5, 33; CX 3, 8, 36.)

11. Respondents furnished false guaranties under Section 10(b) of the Fur Products Labeling Act with respect to certain of their fur products by falsely representing in writing that respondents had a continuing guaranty on file with the Federal Trade Commission when respondents in furnishing such guaranties had reason to believe that the fur products so falsely guaranteed would be introduced, sold, transported and distributed in commerce, in violation of Rule 48(c) of said Rules and Regulations under the Fur Products Labeling Act and Section 10(b) of said Act. (CX 1, 5, 33.)

CONCLUSIONS

1. The Federal Trade Commission has jurisdiction over the respondents and over the subject matter of this proceeding.

2. The acts and practices of the respondents as found in the find-

ings of fact hereinabove set forth 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.

3. The following order should issue:

ORDER

It is ordered, That respondents M. Reiner & Sons, Inc., a corporation, and its officers, and Jack J. Reiner and Seymour Reiner, 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, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the manufacture for sale, 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. 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.

2. 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.

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. Representing, directly or by implication, on invoices that the fur contained in the fur products is natural when such fur is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

Order

77 F.T.C.

It is further ordered, That respondents M. Reiner & Sons, Inc., a corporation, and its officers, and Jack J. Reiner and Seymour Reiner, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from furnishing a false guaranty that any fur product is not misbranded, falsely invoiced or falsely advertised when the respondents have reason to believe that such fur product may be introduced, sold, transported, or distributed in commerce.

It is further ordered, That the 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 of their compliance with this order.

ORDER ADOPTING INITIAL DECISION

No appeal from the initial decision of the hearing examiner having been filed, but the Commission having stayed the effective date of the initial decision by its own order of April 29, 1970, pending proof of service thereof and in order to determine whether said initial decision constitutes an adequate disposition of this case; and

Proof of service of the initial decision having been received and the Commission having determined that the initial decision entered by the hearing examiner on March 31, 1970, adequately disposes of the issues in this case:

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

IN THE MATTER OF

DAVID A. LEVENTHAL, 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-1752. Complaint, June 24, 1970—Decision, June 24, 1970

Consent order requiring a New York City manufacturing furrier to cease falsely invoicing its fur products.