

IN THE MATTER OF
WALTER SWITZER, INC., T/A SWITZER'S, ET AL.

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

Docket C-2872. Complaint, Mar. 4, 1977 — Decision, Mar. 4, 1977

Consent order requiring a Phoenix, Arizona, retailer of women's wearing apparel, including furs and fur products, among other things, to cease violating the labeling, invoicing, and advertising provisions of the Fur Products Labeling Act.

Appearances

For the Commission: *Gerald E. Wright.*

For the respondents: *Pro se.*

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 Walter Switzer, Inc., a corporation, doing business as Switzer's, and Walter E. Switzer, Jr., individually and as an officer 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 Walter Switzer, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Arizona, with its principal office and place of business located at 25 E. Adams St., Phoenix, Arizona.

Respondent Walter E. Switzer, Jr. is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including those hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are retailers of women's wearing apparel, including but not limited to furs and fur products, with retail stores in Phoenix, Scottsdale, and Mesa, Arizona; Las Vegas, Nevada; and El Paso, Texas.

PAR. 3. Respondents are now and for some time last past have been engaged in the introduction into commerce, and in the sale, advertis-

ing, 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. 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:

1. To show the true animal name or animals which produced the fur used in such fur product.

2. To disclose that the fur contained in the fur product was natural, bleached, dyed, or otherwise artificially colored, when such was the fact.

3. To disclose that the fur product was composed in whole or in substantial part of paws, tails, bellies, sides, flanks, gills, ears, throats, or heads, when such was the fact.

4. To disclose the country of origin of imported fur products.

5. To disclose the required fur information in a legible manner on one side of the label.

PAR. 5. 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 thereunder.

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products covered by invoices which failed:

1. To show the true animal name of the animal which produced the fur used in such fur products.

2. To disclose that the fur contained in the fur product was natural, bleached, dyed, or otherwise artificially colored, when such was the fact.

3. To disclose that the fur product was composed in whole or in substantial part of paws, tails, bellies, sides, flanks, gills, ears, throats, or heads, when such was a fact.

4. To disclose the required Item Number.

5. To disclose the country of origin of imported fur products.

PAR. 6. Certain of said fur products were falsely and deceptively advertised by respondents in that they were not advertised as required by Section 5(a) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder.

Among such falsely and deceptively advertised fur products, but not limited thereto, were fur products advertised in the Las Vegas Review-Journal and the Arizona Republic, which failed to disclose that the fur contained in the fur product was natural, bleached, dyed or otherwise artificially colored when such was a fact.

PAR. 7. 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 methods of competition and unfair and deceptive acts and practices in commerce under 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 San Francisco Regional Office 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 for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Walter Switzer, Inc., d/b/a Switzer's, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Arizona, with its principal place of business located at 25 East Adams St., Phoenix, Arizona.

Respondent Walter E. Switzer, Jr., is an officer of said corporation. He formulates, directs and controls the acts, practices and policies of

said corporation, and his address is the same as that of the corporate respondent.

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 Walter Switzer, Inc., a corporation, trading and doing business as Switzer's, or under any other name, its successors and assigns, and its officers, and Walter Switzer, Jr., individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, 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 any fur product by failing to affix a label to such fur product showing in words and in figures plainly legible all of the information required to be disclosed by each subsection of Section 4(2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder.

B. Falsely or deceptively invoicing any fur product by failing to furnish an invoice, as the term "invoice" is defined in the Fur Products Labeling Act, showing in words or 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 and the rules and regulations promulgated thereunder.

C. Falsely or deceptively advertising any fur product by failing to show in words plainly legible all the information required to be disclosed by each of the subsections of Section 5(a) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder.

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

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the

emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this order.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include respondent's current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

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.

Order

89 F.T.C.

IN THE MATTER OF

EXXON CORPORATION, ET AL.

Docket 8934. Interlocutory Order, Mar. 8, 1977

Denial of respondents' motion for reconsideration.

ORDER DENYING MOTION FOR RECONSIDERATION

On Jan. 25, 1977, the Commission issued an order denying respondents' request for interlocutory review of the administrative law judge's protective order of Jan. 5 on the ground that the ALJ, pursuant to Section 3.23(b) of the Commission's Rules of Practice, had not made a determination that an appeal would be appropriate. The Commission noted that, despite the parties' suggestions to the contrary, the law judge had certified to the Commission only one portion of his protective order (paragraph nine) regarding assurances of prior notification before confidential information is disclosed pursuant to Freedom of Information Act and Congressional committee requests. The portion of the order certified was the subject of a separate Commission order of Jan. 31. In that order the Commission again noted that the ALJ had certified only one portion of the order.

Respondents argue that the Jan. 25 order, unless modified, will work serious prejudice to respondents since "[i]n light of the uniformity of the parties' interpretation of the Administrative Law Judge's certification and the absence of any indication that such certification was in any way limited to fewer than all of the issues raised by the protective order, respondents refrained from filing any separate certification request with the Administrative Law Judge." Finally, respondents argue that the Jan. 31 order "appears to confirm the validity of respondents' concerns about the reliability of any protective order entered by this agency."

With respect to respondents' claim of prejudice, the Commission notes that on Feb. 3, the ALJ issued an order confirming that his certification was limited to paragraph nine. On Feb. 10, "in consideration of respondents' assertion that the reason they did not request certification of my protective order within the time allowed was their understanding that the entire order had been certified," he authorized the filing of respondents' request for certification and, thereupon, denied the request. As for respondents' claim going to the merits of the Commission's Jan. 31 order, the Commission adheres to its view that the order provides appropriate protection. Accordingly,

It is ordered, That the aforesaid motion for reconsideration be, and it hereby is, denied.