

Complaint

IN THE MATTER OF

EMINENT, INC. D/B/A REVOLVE CLOTHINGCONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND THE FUR
PRODUCTS LABELING ACT

Docket No. C-4409; File No. 122 3065
Complaint, July 18, 2013 – Decision, July 18, 2013

The consent order addresses allegations that Eminent, Inc., doing business as Revolve Clothing (“Revolve”) violated the Fur Products Labeling Act and the Federal Trade Commission Act by failing to provide accurate information regarding the fur content of four products sold on its company website: (a) an Australia Luxe Collective Nordic Angel Short Boot; (b) a Mark Jacobs Runway Roebling Cost; (c) a Dakota Xan Fur Poncho; and (d) an Eryn Brinie Belted Faux Fur Vest (“Products”). The complaint alleges that Revolve advertised that the Products contained “faux fur” when, in fact, they contained real raccoon fur. Further, Revolve failed to disclose the name of the animal that produced the fur used in the Products. The consent order bars Revolve from misrepresenting the fur content in its mail, catalog, or Internet advertisements. Revolve is further required to maintain copies of advertisements and materials relied upon in disseminating any representation covered by the orders, as well as to provide certain notices and compliance reports to the Commission.

Participants

For the *Commission*: *Randall David Marks and Matthew Wilshire.*

For the *Respondent*: *Abbe Kadish, Lifshutz, Lifshutz & Associates.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. § 41 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission (“Commission”), having reason to believe that Eminent, Inc., d/b/a Revolve Clothing (“respondent”), has violated the provisions of the Federal Trade Commission Act, 15 U.S.C. § 41 *et seq.*, the Fur Products Labeling Act, 15 U.S.C. § 69 *et seq.*, and the Rules and Regulations Under the Fur Products Labeling Act,

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16 C.F.R. Part 301, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Eminent, Inc., is a Delaware corporation with its principal office or place of business at 16800 Edwards Rd., Cerritos, CA 90703.

2. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as commerce is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, and Section 2(j) of the Fur Products Labeling Act, 15 U.S.C. § 69(j).

3. Respondent has advertised, offered for sale, sold, and distributed fur products, as that term is defined in Section 2(d) of the Fur Products Labeling Act, 15 U.S.C. § 69(d). Respondent advertises and offers fur products for sale through its Internet site www.revolve.com.

4. Since approximately January 2, 2011, respondent disseminated, or caused to be disseminated, advertisements for fur products, including, but not limited to, an Australia Luxe Collective Nordic Angel Short Boot (“Nordic Boot”) and a Marc Jacobs Runway Roebling Coat (“Runway Coat”). Respondent featured these products in the advertisements from www.revolve.com that are attached as Exhibit A. The advertisements contained the following statements (emphasis added, except where otherwise noted):

a. For the Nordic Boot:

- \$ Color [Grey, Beva, Brown, Chestnut, Black, Moon Gray]
- \$ Suede upper with rubber sole
- \$ Shell measures approx 13” in length
- \$ Faux fur trim

b. For the Runway Coat:

- \$ Color - Black Olive
- \$ Shell: 100% poly
- Lining: 100% cotton

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- Sherpa Lining: 100% poly
- \$ Button front closure
- \$ Zippered front pockets
- \$ Front flap pockets
- \$ Front welt pockets
- \$ Cuffed sleeves
- \$ Belted vest
- \$ Faux fur trimmed hood
- \$ Styled with Free People High Waisted [sic] Patch Pocket Flare Jean in Watch Tower [Emphasis in original]
- \$ Styled with KORS Michael Kors Benet Bootie in Mushroom [Emphasis in original]

The Runway coat had an attached label stating that the product contained “real coyote fur trim.”

5. Respondent also advertised on its website a Dakota Xan Fur Poncho and an Eryn Brinie Belted Faux Fur Vest as having faux fur. These products had attached labels stating that the products contained “real raccoon fur.”

6. Respondent sold at least 158 units of the above-described products via its website for a total revenue of at least \$32,750.

COUNT I

7. Through the means described in Paragraphs 4 and 5, respondent represented, expressly or by implication, that the fur in the products described in those Paragraphs was faux or fake.

8. In truth and in fact, the products described in Paragraphs 4 and 5 contained real fur. Therefore, the representations set forth in Paragraph 7 were false, deceptive, or misleading.

9. Respondent’s practices, as alleged in this complaint, constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a), and false advertising in violation of Section 5(a)(5) of the Fur Products Labeling Act, 15 U.S.C. § 69c(a)(5), and Sections 301.2(c) and 301.49 of the Rules and Regulations Under the Fur Products Labeling Act, 16 C.F.R.

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§§ 301.2(c) and 301.49. Pursuant to Sections 3(a) and 3(c) of the Fur Products Labeling Act, 15 U.S.C. § 69a(a) and 69a(c), the false advertising of fur products, within the meaning of the Fur Products Labeling Act and the Rules and Regulations Under the Fur Products Labeling Act, is unlawful and an unfair and deceptive act or practice, in commerce, under the Federal Trade Commission Act, 15 U.S.C. § 41 *et seq.*

COUNT II

10. Through the means described in Paragraphs 4 and 5, respondent did not disclose the name of the animal, as set forth in the Fur Products Name Guide, 16 C.F.R. § 301.0 that produced the fur in the products described in Paragraphs 4 and 5.

11. Respondent's practices, as alleged in this complaint, constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a), and false advertising in violation of Sections 5(a)(1) and 5(a)(5) of the Fur Products Labeling Act, 15 U.S.C. § 69c(a)(1) and (5), and Sections 301.2(c) and 301.49 of the Rules and Regulations Under the Fur Products Labeling Act, 16 C.F.R. §§ 301.2(c) and 301.49. Pursuant to Sections 3(a) and 3(c) of the Fur Products Labeling Act, 15 U.S.C. § 69a(a) and 69a(c), the false advertising of fur products, within the meaning of the Fur Products Labeling Act and the Rules and Regulations Under the Fur Products Labeling Act, is unlawful and an unfair and deceptive act or practice, in commerce, under the Federal Trade Commission Act, 15 U.S.C. § 41 *et seq.*

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission has caused this Complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D.C., this eighteenth day of July, 2013.

By the Commission.

EXHIBIT A



EXHIBIT A



Decision and Order

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of certain acts and practices of the Respondent named in the caption hereof, and the Respondent having been furnished thereafter with a copy of a draft of a Complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued, would charge the Respondent with violations of the Federal Trade Commission Act and the Fur Products Labeling Act; and

The Respondent and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), which includes: a statement by Respondent that it neither admits nor denies any of the allegations in the draft complaint, except as specifically stated in the Consent Agreement, and, only for purposes of this action, admits the facts necessary to establish jurisdiction; 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 Respondent has violated the Federal Trade Commission Act, and that a 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 thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, now in further conformity with the procedure prescribed in Commission Rule 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Eminent, Inc., is a Delaware corporation with its principal office or place of business at 16800 Edwards Rd., Cerritos, CA 90703.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the

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Respondent, and the proceeding is in the public interest.

ORDER**DEFINITIONS**

For purposes of this order, the following definitions shall apply:

1. “Respondent” shall mean Eminent, Inc., its successors and assigns, subsidiaries and divisions, and their officers, agents, representatives, and employees.
2. “Commerce” shall mean commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.
3. “Covered product” shall mean any article of clothing or covering for any part of the body that (a) is made in whole or in part of fur or used fur or (b) respondent advertises as containing fake or faux fur.
4. “Fur” shall mean any animal skin or part thereof with hair, fleece, or fur fibers attached thereto, either in its raw or processed state, but shall not include such skins as are to be converted into leather or which in processing shall have the hair, fleece, or fur fiber completely removed.
5. “Fur product” shall mean any article of clothing or covering for any part of the body made in whole or in part of fur or used fur.

I.

Decision and Order

IT IS ORDERED that, subject to the guaranty provisions of the Fur Products Labeling Act (“Fur Act”), 15 U.S.C. § 69 *et seq.*, and the Rules and Regulations Under the Fur Products Labeling Act (“Fur Rules”), 16 C.F.R. Part 301, Respondent, directly or through any person, partnership, corporation, subsidiary, division, trade name, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any fur product in any advertisement disseminated through the mail, on any website, or in any catalog, in or affecting commerce, is hereby permanently restrained and enjoined from engaging in, causing other persons to engage in, or assisting other persons to engage in, violations of the Fur Act and the Fur Rules, including, but not limited to, falsely or deceptively advertising any fur product by misrepresenting or failing to disclose:

- A. That the fur in any fur product is faux or fake;
- B. The name or names (as set forth in the Fur Products Name Guide, 16 C.F.R. § 301.0) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to 15 U.S.C. § 69e(c);
- C. That the fur is used fur or that the fur product contains used fur when such is the fact;
- D. That the fur product or fur is bleached, dyed, or otherwise artificially colored fur when such is the fact;
- E. That the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur when such is the fact; and
- F. The name of the country of origin of any imported furs or those contained in the fur product.

Provided that, in the event the Fur Act or Fur Rules are amended or modified:

- 1. Respondent shall comply fully and completely with all applicable requirements thereof, on and after the effective date of any such act or rule; and

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2. That nothing in this Paragraph shall impose upon Respondent obligations beyond what is required under the amended or modified version of the Fur Act or Rules.

Provided further that if Respondent (1) cannot legally obtain a guaranty when it takes an ownership interest in a fur product, (2) does not embellish or misrepresent claims provided by the manufacturer about that product, and (3) does not sell the product as a private label product, then Respondent shall be liable for a violation of this Paragraph only if it knew or should have known that the marketing or sale of the product would violate this Paragraph.

II.

IT IS FURTHER ORDERED that Respondent shall maintain and, upon request, make available to the Commission, for inspection and copying, all records that will demonstrate compliance with the requirements of this order, including, but not limited to:

- A. All acknowledgments of receipt of order obtained pursuant to Paragraph III.B.
- B. For three (3) years after the last date of dissemination of any representation by Respondent about any covered product in any advertisement disseminated through the mail, on any website, or in any catalog;
 1. All advertisements and promotional materials containing the representation;
 2. All materials that were relied upon in disseminating the representation;
 3. All tests, reports, studies, surveys, demonstrations, or other evidence in the possession or control of any of the persons covered by Paragraph III.A that contradict, qualify, or call into question the

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representation, or the basis relied upon for the representation; and

4. All complaints and other communications with consumers that call into question the representation, or the basis relied upon for the representation, in connection with a specific product purchased by a specific consumer, and all communications with governmental or consumer protection organizations that contradict, qualify, or call into question the representation, or the basis relied upon for the representation.

III.

IT IS FURTHER ORDERED that Respondent shall:

- A. For a period of three (3) years, deliver a copy of this order to all employees, agents, and representatives having responsibilities with respect to Respondent's marketing or advertising of any covered product in any advertisement disseminated through the mail, on any website, or in any catalog and to any manager or officer in the chain of command of such employees, agents, and representatives, within thirty (30) days after (1) the date of service of this order, or (2) the person assumes a position covered by this paragraph.
- B. Secure from each person receiving this order pursuant to this paragraph a signed and dated statement acknowledging receipt of this order.

IV.

IT IS FURTHER ORDERED that Respondent shall notify the Commission in connection with compliance with this order as follows:

- A. At least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including, but not limited to, a dissolution, assignment, sale, merger, or other action,

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that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided that*, with respect to any proposed change in the corporation about which Respondent learns less than thirty (30) days prior to the date such action is to take place, Respondent shall notify the Commission as soon as is practicable after obtaining such knowledge.

- B. Within sixty (60) days after the date of service of this order, file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its own compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, it shall submit additional true and accurate written reports.
- C. Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be emailed to Debrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: FTC v. Eminent Inc., File Number 1223065, Docket Number C-4409.

V.

IT IS FURTHER ORDERED that this order will terminate on July 18, 2033, or twenty (20) years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later. *Provided that* the filing of such a complaint will not affect the duration of:

Analysis to Aid Public Comment

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order, if such complaint is filed after the order has terminated pursuant to this Part. *Provided, further*, that if such complaint is dismissed, or a federal court rules that the Respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

**ANALYSIS OF CONSENT ORDER
TO AID PUBLIC COMMENT**

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, agreements containing consent orders from The Neiman Marcus Group, Inc. (“Neiman Marcus”), DrJays.com, Inc. (“DrJays”), and Eminent, Inc., doing business as Revolve Clothing (“Revolve”).

The proposed consent orders have been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreements and the comments received, and decide whether it should withdraw from the agreements or make the proposed orders final.

Proposed Complaints

Analysis to Aid Public Comment

These matters involve violations of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a) (“FTC Act”), Section 5(a)(5) of the Fur Products Labeling Act, 15 U.S.C. § 69c(a)(5) (“Fur Act”), and Sections 301.2(c) and 301.49 of the Rules and Regulations Under Fur Products Labeling Act, 16 C.F.R. §§ 301.2(c) and 301.49 (“Fur Rules”). In 2010, Congress enacted the Truth in Fur Labeling Act, which amended the Fur Act by, among other things, eliminating an exemption for items containing fur valued at no more than \$150. As a result, the Fur Act now requires disclosure of any fur content in wearing apparel.

The proposed complaints allege that Neiman Marcus, DrJays, and Revolve each advertised products containing real fur as containing “faux fur” on its Internet site. The proposed complaints further allege that the advertisements failed to disclose the names, as set forth in the Fur Products Name Guide, 16 C.F.R. § 301.0, of the animals that produced the fur in each product. They also allege that most of the products had labels correctly identifying the fur content.

The proposed complaint against Neiman Marcus alleges that the company’s website misrepresented the fur content and failed to disclose the animal name for three products: an Outerwear Jacket, a Ballerina Flat by Stuart Weitzman, and a Kyah Faux Fur-Collar Coat. In addition to falsely advertising the Ballerina Flat online as “faux” fur, Neiman Marcus’ catalog and mail advertising falsely represented that the product’s fur was mink when it was in fact rabbit. The proposed complaint further alleges that Neiman Marcus sold at least 316 units of the three products. Finally, it alleges that Neiman Marcus failed to disclose the country of origin of each product.

The proposed complaint against DrJays alleges that the company misrepresented the fur content and failed to disclose the animal name for three products: a Snorkel Jacket by Crown Holder; a Fur/Leather Vest by Knoles & Carter; and a New York Subway Leather Bomber Jacket by United Face. It further alleges that DrJays sold at least 241 units.

The proposed complaint against Revolve alleges that the company misrepresented the fur content and failed to disclose the

Analysis to Aid Public Comment

animal name for four products: an Australia Luxe Collective Nordic Angel Short Boot; a Marc Jacobs Runway Roebling Coat; a Dakota Xan Fur Poncho; and an Eryn Brinie Belted Faux Fur Vest. It further alleges that Revolve sold at least 158 units of the products.

Proposed Orders

The proposed orders are designed to prevent Neiman Marcus, DrJays, and Revolve from engaging in similar acts and practices in the future. Paragraph I bars each proposed respondent from violating the Fur Act and Rules by, among other things, misrepresenting in mail, catalog, or Internet advertisements that the fur in any product is faux or fake or misrepresenting the type of fur. Paragraph I also contains a proviso incorporating the Enforcement Policy Statement that the Commission announced on January 3, 2013. The proviso and Statement provide a safe harbor when a retailer cannot legally obtain a guaranty, as long as the retailer meets certain requirements, including that it neither knew nor should have known of the violation.

Paragraphs II through IV will help the Commission ensure that the proposed respondents comply with Part I by requiring them to keep copies of advertisements and materials relied upon in disseminating any representation covered by the orders (Paragraph II); provide copies of the orders to certain personnel having responsibility for the advertising or sale of fur and fake fur products (Paragraph III); and provide certain notices and compliance reports to the Commission (Paragraph IV).

Finally, Part V provides that the orders will terminate after twenty (20) years, with certain exceptions. The purpose of this analysis is to facilitate public comment on the proposed orders. It is not intended to constitute an official interpretation of the complaints or the proposed orders, or to modify the proposed orders' terms in any way.

Complaint

IN THE MATTER OF

**MOTOROLA MOBILITY LLC
AND GOOGLE INC.**CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket No. C-4410; File No. 121 0120
Complaint, July 23, 2013 – Decision, July 23, 2013*

This consent order concerns the consummated acquisition by Google, Inc. (“Google”) of Motorola Mobility LLC (“Motorola”). In June 2012, Google purchased Motorola for approximately \$12.5 billion. As part of the acquisition, Google acquired several patents necessary for compliance with cellular, video codec, and wireless LAN industry standards. The complaint alleges that, though Motorola had agreed to license these patents on fair, reasonable, and non-discriminatory (FRAND) terms, Google reneged on these FRAND commitments, sought injunctions and exclusion orders against willing licensees, filed patent infringement claims at the ITC, and sought injunctive relief in several federal district courts. The complaint alleges that Google’s conduct constituted an unfair method of competition in violation of FTC Act Section 5. Further, the complaint alleges Google’s conduct would injure consumers by impairing the efficacy of the standard-setting process and deprive consumers of lower costs, increased interoperability and rapid technological development that an open and efficient standard-setting process provides. The order requires Google to provide a FRAND license to any potential licensee before seeking an injunction on a standard-essential patent. The order also bars Google from revoking or rescinding any FRAND commitment it has made or assumed unless the relevant standard to which the patent applies no longer exists.

Participants

For the *Commission*: *Matthew Accornero, Gustav P. Chiarello, Peggy Bayer Femenella, Susan Huber, Rajesh James, Suzane Munck, Michael Turner, and Michelle Yost.*

For the *Respondents*: *John Harkrider, Axinn, Veltrop and Harkrider, LLP.*

COMPLAINT

Pursuant to Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45 (“FTC Act”), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to