

Findings

IN THE MATTER OF  
 JACQUES DE GORTER ET AL. TRADING AS PELTA FURS  
 ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE  
 COMMISSION AND THE FUR PRODUCTS LABELING ACTS

*Docket 6297. Complaint, Feb. 25, 1955—Decision, May 11, 1956*

Order requiring furriers in Los Angeles, Calif., to cease false advertising and misbranding of fur products in violation of the Fur Products Labeling Act and the Federal Trade Commission Act.

Before *Mr. Abner E. Lipscomb*, hearing examiner.  
*Mr. John T. Walker* and *Mr. Edward F. Downs* for the Commission.  
*Walley & Davis*, of Los Angeles, Calif., for respondents.

FINDINGS AS TO THE FACTS, CONCLUSIONS AND ORDER

The Commission, having fully considered the entire record herein, including the initial decision of the hearing examiner and the cross-appeals therefrom, and having rendered its decision granting the appeal of counsel in support of the complaint and denying the appeal of respondents, and having vacated and set aside the initial decision, finds that this proceeding is in the interest of the public and makes this, its findings as to the facts, conclusions drawn therefrom, and order, the same to be in lieu of said initial decision.

FINDINGS AS TO THE FACTS

1. Respondents, Jacques De Gorter and Suze C. De Gorter, are individuals trading as Pelta Furs, with their office and principal place of business located at 437 West Seventh Street, Los Angeles, California.
2. Respondents, Jacques De Gorter and Suze C. De Gorter, individually and trading as Pelta Furs, for several years last past have been engaged in the purchase and distribution of fur products, including fur coats, jackets, stoles and related fur garments.
3. Respondents stipulated that in the course of their business, they are in substantial competition in commerce with other firms, corporations, copartnerships and individuals also engaged in the sale of fur products to members of the purchasing public, and it is established by uncontroverted evidence that respondents obtained approximately 25% of their fur products by means of purchases made outside the State of California, and that such fur products were shipped to them

## Findings

52 F. T. C.

at their place of business in California. The evidence also shows that these fur products were thereafter advertised in newspapers having an interstate circulation. The evidence further shows that in the months of September, October and November, 1953, respondents sold and shipped one fur product each month to purchasers outside the State of California, and that in the month of December of the same year, respondents so sold and shipped four fur products. Although these seven sales in commerce represent only a small proportion of all respondents' sales during that period of time, they are not mere isolated instances, but constitute a course of trade in commerce among and between the various States of the United States, as "commerce" is defined in the Federal Trade Commission Act. It is further found that the activities of the respondents in procuring fur products from sources outside the State of California, and thereafter advertising and offering for sale in newspapers of interstate circulation, and then selling and shipping and delivering such fur products in commerce clearly bring their business activities within the concept of "commerce" under the Fur Products Labeling Act.

4. As established by stipulation, and by other record evidence, respondents, in the course and conduct of their business, caused to be disseminated, in various newspapers having interstate circulation, advertisements containing certain statements and representations, among and including but not limited to the following:

In the "Los Angeles Examiner," issue of September 20, 1953:

*After Thirty-Eight Years—Los Angeles' Largest Exclusive Furrier—PELTA FURS Quits. Going Out of Business Sale! \* \* \* Entire Stock Must Go \* \* \* Slashed Prices \* \* \**

In the "Los Angeles Examiner," issue of October 11, 1953:

*PELTA FURS \* \* \* QUILTS! \$250,000.00 Inventory Sacrificed, Entire Fur Stock MUST GO: At a Fraction of Original Prices! Savings are Tremendous \* \* \**

In the "Los Angeles Examiner," issue of November 22, 1953, substantially the same language appeared as quoted immediately above, with the added statement:

*All Advance 1954 Holiday Gift Furs Now At Cost and Below Cost \* \* \**

In the "Los Angeles Examiner," issue of January 17, 1954:

*Out They Go—For Whatever We can Get! Final days of Pelta Furs Going Out of Business Sale. A Group to be Liquidated at Cost or Below Cost \* \* \* NOTICE—Arrangements Have Been Made to Adequately Take Care of Complete Guarantee and Promised Free Fur Service \* \* \**

1307

Findings

	Were	Now		Were	Now
Fur items.....	\$595	\$166	Fur items.....	\$1,095	\$333
Do.....	675	188	Do.....	1,175	393
Do.....	750	244	Do.....	1,250	444
Do.....	795	299			

In the "Los Angeles Times," issue of September 26, 1954:

MANUFACTURER'S FINANCIAL SACRIFICE! Many at Cost! Many Below Cost! Many Marked Regardless of Cost! \* \* \*

In the "Los Angeles Times," issue of October 17, 1954:

DISCOUNT SALE! Tremendous Inventory of Selected Furs. PRICED REGARDLESS OF COST! \* \* \*

	Value to—	Now		Value to—	Now
Fur items.....	\$250	\$88	Fur items.....	\$750	\$388
Do.....	350	128	Do.....	975	488
Do.....	450	188	Do.....	3,500	1,488
Do.....	595	288			

As established by Commission's Exhibit No. 14, respondents, on May 17, 1953, published in the Los Angeles Examiner an advertisement, as follows:

DELTA FURS consolidates with famous wholesale mink manufacturer. More Room Required! Complete Stock \$250,000.00 Exquisite Styles Now on Sale ½ price. Present unchanged price tags remain on garment. YOU MAY DEDUCT ONE-HALF! ! !

5. Advertisements disseminated in commerce, by respondents, typical examples of which are quoted above and which advertisements were intended to and did aid, promote and assist, directly and indirectly, in the sale and offering for sale by respondents of fur products, are shown by stipulation or otherwise to have been false and deceptive through failure to set forth information required by Section 5 (a) of the Fur Products Labeling Act, by omitting to state:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur products, as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations:

(b) That fur products contained or were composed of bleached, dyed or otherwise artificially colored fur, when such was the fact;

(c) The name of the country of origin of imported fur contained in such fur products.

6. Besides it having been so stipulated by respondents, the record shows and it is found that certain of respondents' fur products were misbranded as follows:

## Findings

52 F. T. C.

(a) The name or names of the animals producing the fur contained in such fur products were in violation of Section 4 (1) of the Fur Products Labeling Act, falsely and deceptively identified as "mink" on the reverse side of the label attached thereto, on the obverse side of which appeared the proper identification of such fur product;

(b) They did not have affixed thereto labels showing the information 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;

(c) Labels attached to fur products set forth the name of an animal other than the name of the animal that produced the fur, in violation of Section 4 (3) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder;

(d) Required information was mingled with non-required information on labels, in violation of Rule 29 (a) of the said rules and regulations;

(e) Required information was not completely set forth on one side of the labels, as required by Rule 29 (a) of the aforesaid rules and regulations;

(f) Required information was set forth in handwriting on labels, in violation of Rule 29 (b) of the aforesaid rules and regulations;

(g) Required information was set forth in improper sequence on labels, in violation of Rule 30 of the aforesaid rules and regulations.

7. As established by stipulation and other evidence of record, certain of respondents' products were falsely and deceptively invoiced, as follows:

(a) Certain of respondents' fur products were falsely and deceptively invoiced, in that they were not invoiced as required under the provisions of Section 5 (b) (1) of the Fur Products Labeling Act, and in the manner and form prescribed by the rules and regulations promulgated thereunder;

(b) Certain of respondents' fur products were falsely and deceptively invoiced in that respondents, on invoices furnished to purchasers of said fur products, set forth the name of an animal other than the name of the animal that produced the fur, in violation of Section 5 (b) (2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder;

(c) In violation of the Fur Products Labeling Act, they were not invoiced in accordance with the rules and regulations promulgated thereunder, in the following respects:

(1) Required information was set forth in abbreviated form in violation of Rule 4 of the aforesaid rules and regulations;

(2) Respondents failed to set forth an item number or mark assigned to fur products in violation of Rule 40 (a) of the aforesaid rules and regulations.

8. Advertisements, typical examples of which are heretofore quoted, which show discount sales and comparative and fictitious prices, must be considered in connection with respondents' method of determining the prices at which their fur products shall be sold, and of setting forth such prices on the price tags attached to each fur product. The evidence shows that when a shipment of fur products is received by respondents, price tags are prepared bearing three prices, the largest of which is set forth in plain figures and may be read by anyone. The other two prices are written in code, and may only be read by the respondents or members of their sales staff who know the code. The plainly shown maximum price is referred to by the respondents as the "regular price," and represents respondents' maximum asking price. When a sale is advertised, the plainly marked price is shown as the regular price or value of the item featured, and the higher of the two coded prices is shown as the sale price. The lower of the two coded prices represents the price below which respondents cannot sell the product and still make a profit. These price tags are not altered or removed from the garments when they are placed on sale, and the only price that can be read by the customers is the first or maximum price. These maximum prices are realized by respondents during the off-season in only 10% of their sales, and in the fur-selling season in less than 50% of their sales.

Respondent Jacques De Gorter testified that he never identified a particular garment in advertisements, and that therefore he sold any of his fur garments at any of the three prices marked on the tag, preferably the maximum if he could get it. He further testified that if a customer offered him one of the coded prices and he concluded that he could not sell the garment at the higher price, then he would sell it for the price offered.

The conclusion is warranted, and it is therefore found that:

(a) When respondents advertise a sale and list the plainly ticketed price as the regular price of the item on sale, they are using a fictitious price in the sense that it is not the price at which the garment has been customarily and usually sold by the respondents in the recent course of their business in violation of Rule 44 (a) of the aforesaid rules and regulations.

(b) The respondents, by the use of comparative prices as shown in the above-quoted advertisements, misrepresented the savings to be effected by purchasers of respondents' fur products in violation of Rule 44 (b) and (c) of the aforesaid rules and regulations.

## Conclusion

52 F. T. C.

It is established by stipulation and other evidence of record that:

(a) Respondents have misrepresented the grade, quality or value of certain of their fur products by advertising such fur products by the use of illustrations which showed such fur or fur products to be higher priced products than the ones so advertised in violation of Rule 44 (f) of the aforesaid rules and regulations.

(b) Respondents, in violation of Rule 44 (g) of the aforesaid rules and regulations, have misrepresented certain of their fur products as being:

- (1) from the stock of a business in the state of liquidation; and
- (2) from the stock of a business consolidated with that of a famous mink manufacturer.

(c) Respondents, by doing the acts and engaging in the practices above found, have failed to maintain full and adequate records disclosing the facts upon which the claims and representations were based, in violation of Rule 44 (e) of the aforesaid rules and regulations.

## FIRST CONCLUSION

It is concluded that this proceeding is in the public interest for the protection of consumers and others within the purpose and intent of the Fur Products Labeling Act; that respondents through misbranding, false, misleading and deceptive statements, representations and advertising, and false invoicing of fur products as covered, in Paragraphs 1-8, inclusive, intended to, and did, aid, promote and assist, directly or indirectly in the sale of said fur products; and that the use of the aforesaid practices by respondents has been and is unlawful within the meaning of the Fur Products Labeling Act and of 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.

9. By means of the statements contained in advertisements, typical examples of which are set forth above, respondents represented that the firm of Pelta Furs, and the owners thereof, were going out of the fur business; were discontinuing operations, and disposing of or liquidating their entire stock of fur products at "distress" prices, and that members of the public could purchase such products at, or for less than, the amount respondents had paid for them. The record shows, however, that respondents did not go and are not now out of the fur business; did not discontinue operations and did not dispose of or liquidate their entire stock at "distress" prices or otherwise. Accordingly, the aforesaid representations as to reduced prices and as to savings to be effectuated thereby, and respondents' acts, prac-

1307

Conclusion

tices, statements and representations relating thereto, are false, misleading and deceptive.

10. By means of statements contained in advertisements, typical examples of which are set forth above, and by oral representations made by respondents or their sales people, respondents represented directly or by implication that price tags affixed to fur products offered for sale by them were the usual prices charged by respondents for their fur products in the recent regular course of business. The evidence substantiates and it is found that said quoted prices were primarily for bargaining purposes; the actual price at which respondents generally expected to and did sell such fur products during the recent regular course of their business was a lower price, as set forth in a series of coded prices on the price tags. The final coded price represented the lowest price at which the fur product can be sold and still permit respondents to make a profit. The selling prices so represented in code were not understandable as a price marked on said price tags to a substantial portion of the purchasing public, but could be easily understood by respondents and their sales people.

Respondent Jacques De Gorter testified that he sold fur products, or authorized their sale, at any of the three prices marked on the price tag, preferably the maximum. He further testified that if a customer would not purchase at the higher price but offered a price within the maximum and minimum code prices, then he would on occasion sell, or authorize the sale, at the price offered.

Accordingly, it is found that when respondents advertise a sale and list the plainly ticketed price as one at which a fur product has been customarily and usually sold in the recent course of business they are using fictitious prices. And, by use of the comparative prices as shown in the above-quoted advertisements, respondents have misrepresented the savings to be effected by prospective purchasers of their fur products. In summary, by affixing to fur products price tags showing plainly marked price values containing fictitious prices and by the aforesaid advertised reductions in price, such as one-half off and by comparative pricing, coupled with oral representations made by respondents and their sales people, respondents are found to have engaged in false, misleading and deceptive practices.

It is further established by stipulation and other probative evidence that respondents by means of illustrations or depictions of higher priced or more valuable fur products than those actually available for sale at the advertised selling price have represented that such fur products are of a higher grade, quality, or value than is the fact.

11. The complaint herein alleges and the record shows that the principal acts and practices complained of occurred in 1953, prior to

Order

52 F. T. C.

the dissolution of the partnership between the two respondents, which occurred on January 31, 1954. The withdrawal of Suze C. De Gorter from the business of Pelta Furs, after participation in the commission of unlawful acts and practices, does not absolve her from responsibility therefor under the Federal Trade Commission Act and the Fur Products Labeling Act. Furthermore, the record contains no evidence which would give adequate assurance to the Federal Trade Commission that she would not again participate in such acts in the future. Accordingly, respondent Suze C. De Gorter must be held equally responsible with respondent Jacques De Gorter for the acts and practices herein found to be in violation of the Fur Products Labeling Act and the Federal Trade Commission Act. Therefore, the dismissal of the complaint as to her is not warranted.

## FINAL CONCLUSIONS

It is concluded, as previously indicated, that this proceeding is in the public interest, and that the use by respondents of the false and misleading statements and representations covered in Paragraphs 9 and 10 above has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were and are in fact true, and to induce the purchase of substantial quantities of respondents' fur products by reason of such erroneous and mistaken belief. As a result thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors, and substantial injury has been and is being done to competition in commerce.

It is further concluded that the aforesaid acts and practices of respondents, covered in Paragraphs 9 and 10 above, are all to the prejudice and injury of the public and of the respondents' competitors, and 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.

## ORDER

*It is ordered,* That respondents, Jacques De Gorter and Suze C. De Gorter, individually and as copartners trading as Pelta Furs or under any other trade name, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction, or the sale, advertising or offering for sale, or the transportation or distribution of any fur product in commerce, or in connection with the sale, advertising, offering for sale, transportation or distribution of fur products which have been



1307

## Order

made in whole or in part of fur which had been shipped and received in commerce, as "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. Falsely or deceptively labeling or otherwise identifying any such product as to the name or names of the animal or animals that produced the fur from which such product was manufactured;

2. Failing to affix labels to fur products showing:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur product as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;

(b) That the fur product contains or is composed of used fur when such is a fact;

(c) That the fur product contains or is composed of bleached, dyed, or artificially colored fur when such is a fact;

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

(e) The name, or other identification issued and registered by the Commission, of one or more persons who manufactured such fur product for introduction into commerce, introduced it into commerce, sold it in commerce, advertised or offered it for sale in commerce, or transported or distributed it in commerce;

(f) The name of the country of origin of any imported furs used in the fur product.

3. Setting forth, on labels attached to fur products, the name or names of any animal or animals other than the name or names provided for in Paragraph A (2) (a) above.

4. Setting forth on labels attached to fur products:

(a) Non-required information mingled with required information;

(b) Required information in handwriting;

(c) Required information in a sequence different from that required by Rule 30 (a) of the rules and regulations.

5. Failing to show, on labels attached to fur products, all of the required information on one side of such labels.

## B. Falsely or deceptively invoicing fur products by:

1. Failing to furnish invoices to purchasers of fur products showing:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur product as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;

(b) That the fur product contains or is composed of used fur when such is a fact;

Order

52 F. T. C.

(c) That the fur product contains or is composed of bleached, dyed, or artificially colored fur when such is a fact;

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

(e) The name and address of the person issuing such invoices;

(f) The name of the country of origin of any imported furs contained in the fur product.

2. Using on invoices the name or names of any animal or animals other than the name or names provided for in Paragraph B (1) (a) above, or setting forth thereon any form or misrepresentation or deception, directly or by implication, with respect to such fur products.

3. Setting forth required information in abbreviated form.

4. Failing to show the item number or mark of fur products on the invoices pertaining to such products, as required by Rule 40 of the rules and regulations.

C. Falsely or deceptively advertising fur products, through the use of any advertisement, public announcement, or notice which is intended to aid, promote or assist, directly or indirectly, in the sale or offering for sale of fur products, and which:

1. Fails to disclose:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur products as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;

(b) That the fur products contain or are composed of bleached, dyed, or otherwise artificially colored fur when such is a fact;

(c) The name of the country of origin of imported furs contained in fur products.

2. Represents directly or by implication:

(a) That the regular or usual price of any fur product is any amount which is in excess of the price at which respondents have usually and customarily sold such products in the recent regular course of their business;

(b) That a sale price enables purchasers of fur products to effectuate any savings in excess of the difference between the said price and the price at which comparable products were sold during the time specified or, if no time is specified, in excess of the difference between said price and the current price at which comparable products are sold;

(c) That an amount set forth on price tags, or otherwise relating or referring to fur products, represents the value or the usual price at which said fur products had been customarily sold by respondents in the recent regular course of their business, contrary to fact;

1307

Appeal

(d) That any such product is of a higher grade, quality, or value than is the fact, by means of illustrations or depictions of higher priced or more valuable products than those actually available for sale at the advertised selling price, or by any other means.

(e) That any of such products are:

1. from the stock of a business in a state of liquidation, contrary to fact;

2. from the stock of a business recently consolidated with another, contrary to fact.

3. Makes pricing claims or representations of the type referred to in Paragraph C (2) (a), (b), and (c) above, unless there is maintained by respondents full and adequate records disclosing the facts upon which such claims or representations are based.

*It is further ordered,* That respondents, Jacques De Gorter and Suze C. De Gorter, individually and as copartners trading as Pelta Furs or under any other trade name, and respondents' representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of fur products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do further cease and desist from making, directly or by implication, any of the representations prohibited by Paragraph C (2) of this order.

*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 the order to cease and desist.

Commissioners Gwynne and Mason dissenting in part.

ON APPEAL FROM INITIAL DECISION

By KERN, Commissioner:

Respondents, retailers of furs, were charged in a complaint, issued February 25, 1955, with false advertising, misbranding and false invoicing of fur products in violation of the Fur Products Labeling Act and rules and regulations promulgated thereunder, and, further, the acts complained of also were alleged to constitute unfair methods of competition and unfair and deceptive practices under the Federal Trade Commission Act.

In due course, the hearing examiner filed his initial decision in which he found that respondents had engaged in all of the questioned acts and practices. On the basis of these findings he concluded that such acts constituted unfair and deceptive acts and practices and unfair methods of competition in commerce "within the intent and meaning of the Federal Trade Commission Act."

## Appeal

52 F. T. C.

Both sides have appealed from the initial decision. Respondents contend on appeal that the complaint against them should be dismissed. Counsel in support of the complaint appeals from the failure of the hearing examiner to prohibit as violative of the Fur Products Labeling Act, as well as the Federal Trade Commission Act, respondents' use, in their advertising, of fictitious or false comparative price and value representations as to fur products.

The facts in this proceeding are not seriously in dispute. Most of the factual issues have been resolved by stipulations between counsel and the only issues remaining for consideration arise out of disputed interpretations and conclusions to be drawn from facts on the record, stipulated and otherwise.

Respondents' contention that no cease-and-desist order should be entered against them essentially is based upon a two-pronged plea:

(1) That respondents were not, and are not now, engaged in interstate commerce.

(2) That Rule 44 (a) to (g), inclusive, of the rules and regulations promulgated by the Commission under the Fur Products Labeling Act, is not binding upon respondents since it, Rule 44, is beyond the Commission's authority under that Act.

On the question of whether respondents are engaged in commerce, it was stipulated on the record by agreement of counsel, and the hearing examiner found, that respondents are in substantial competition in commerce with other firms, corporations, copartnerships and individuals also engaged in the sale of fur products to members of the purchasing public. And, the hearing examiner found uncontroverted evidence showing that 25% of the fur products dealt in by respondents consisted of purchases outside of California which are shipped to them at their place of business in that State, and that these products were advertised in newspapers having interstate circulation. The hearing examiner also found that respondents sold and shipped fur products to purchasers outside of California, thus engaging in a course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act. Since the record clearly discloses that respondents procured fur products outside of California and thereafter advertised them in newspapers with interstate circulation, their business activities clearly come "within the concept of commerce under the Fur Products Labeling Act." We are of the opinion that the hearing examiners' conclusion that respondents' business activities come within the ambit of both Acts is correct and is substantiated on the record.

Our conclusion that respondents are engaged in interstate commerce, both as defined by the Fur Products Labeling Act and by the

1307

Appeal

Federal Trade Commission Act, as indicated above, and our rulings hereinafter on respondents' second plea on appeal and on the appeal of counsel in support of the complaint render it unnecessary specifically to discuss in this opinion respondents' exceptions on appeal as such.

Respondents' second plea on appeal and the cross-appeal of counsel in support of the complaint raise the remaining issue, which we state as follows:

1. Is Rule 44 of the Rules and Regulations under the Fur Products Labeling Act, relating to misrepresentation of prices and values with regard to fur products, within the rule making authority conferred upon the Commission by the Act?

Under Section 8 (b) of the Fur Products Labeling Act, the Commission is both empowered and directed to prescribe rules and regulations governing the manner of disclosing information required by the Act and those necessary and proper for purposes of its administration and enforcement. Agency rulemaking authority embraces statements of general applicability designed to implement or interpret existing law and policy. Hence, if the acts cataloged as price misrepresentations and the matters which persons are forbidden to "advertise" under the various paragraphs of Rule 44 are practices forbidden under the Act itself, then the rule must be regarded as a valid exercise of the Commission's authority to promulgate rules.

The validity of the rule's prohibitions against pricing misrepresentations turns primarily on the meaning of the following emphasized language in Section 5 (a) (5):

SEC. 5. (a) For the purposes of this Act, a fur product or fur shall be considered to be falsely or deceptively advertised if 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 such fur product or fur—

\* \* \* \* \*

(5) contains the name or names of any animal or animals other than the name or names specified in paragraph (1) of this subsection, or contains any form of misrepresentation or deception, directly or by implication, with respect to such fur product or fur; \* \* \* [Emphasis supplied.]

There can be no doubt but that the underscored language, when literally read, comprehends all forms of misrepresentation or deception in connection with the advertising of furs and fur products. That this phrase constitutes a separate and substantive rule of law rather than a mere amplification of other requirements of the Act also is clear. Attesting to this is the fact that a comparable provision in reference to false invoicing (Section 5 (b) (2)) is likewise prefaced by the disjunctive "or" and in the misbranding section (Section 4 (1)) a similar expression is entirely segregated from the requirements for

affirmative disclosure as to the presence of used fur, waste fur, and other matters and is an integral part of one of the various definitive provisions relating to misbranded fur products. Thus, under that subsection, a fur product is misbranded when falsely or deceptively labeled and also when the label contains any form of misrepresentation or deception with respect to it.

Relevant to this aspect and another circumstance indicating that the phrase under consideration was to stand alone is the fact that similar but not identical language appeared in the first two bills considered by the Congress on the subjects of fur labeling, advertising and invoicing. Prior to the statute's final enactment by the 82d Congress, legislation had been considered in the 80th and 81st Congresses. The definitions of deceptive advertising and invoicing provided under each of the two original bills introduced in the 80th Congress appeared in one section comprising one paragraph and containing two numbered provisions. Under each bill, one numbered provision forbade use of animal names other than those elsewhere specified in the Act, and the other rendered advertising and invoicing false when "any other form of misrepresentation or deception other than misbranding is practiced directly or by implication in connection with the sale of such article or fur."

The House committee considered the particular bill pending before that body and reported out a substitute bill which treated the subjects of false advertising and invoicing separately and imposed certain affirmative disclosure requirements. The revisions necessitated for the disclosure requirements and in another respect for defining false and deceptive advertising comprised four new, separately numbered subsections, and the original two provisions were retained to constitute a fifth subsection, but without numerical differentiation between them as formerly. The language of the committee's substitute in reference to general deception was identical to that of Section 5 (a) (5), as today effective.

We note, too, that Section 5 (a) (5) of the Fur Act is somewhat analogous to Section 15 (a) (2) of the Federal Trade Commission Act. The former is in the disjunctive and consists of a specific provision that is followed by a more general provision. The specific expression condemns the use of any animal names for fur products other than those listed in the Fur Products Name Guide without regard to whether such use would be, or tends to be, deceptive. This resembles the flat prohibition of Section 15 (a) (2) of the Federal Trade Commission Act against the use of dairy terms in oleomargarine advertising suggesting that such margarine is a dairy product and irrespective of whether deception has been engendered. As

1307

Appeal

recently held in *Reddi-Spread Corp. v. Federal Trade Commission*, No. 11673, 3d Cir., Jan. 18, 1956, it is not necessary for the Commission to prove deception in proceedings instituted under the section relating to the advertising of margarine. It is apparent that the obvious intent and effect of the first provision of Section 5 (a) (5) of the Fur Act was to make unlawful *per se* the use of animal names not listed in the Fur Guide with the second element of the disjunction then providing that all forms of provable deception should also be unlawful. Reading the statute in this fashion, there is no tenable basis for conclusions that the broad provision is limited by the specific provision that precedes it.

Having concluded that the provision against misrepresentation and deception was not to be a mere adjunct to other language in Section 5 (a) (5) and that it constituted instead a separate and substantive rule of law, we turn to the question of whether Congress may have intended to exclude misrepresentation of prices from its application. While the legislative reports do not specifically or expressly indicate that Congress intended to proscribe pricing misrepresentations, neither do they show that this form of misrepresentation was to be excluded. The report submitted in the House which antedated the brief conference report on the final draft of bill emphasized the requirements for affirmative disclosure set out in Sections 4 and 5. However, the report submitted by the Senate Committee which antedated the conference report referred to Section 4 relating to misbranding and stated that a product would be considered to be misbranded if falsely or deceptively labeled or identified or "if the label contains any form of misrepresentation or deception"; and it added, among other things, that Section 5, the false advertising section, closely followed the language of Section 4.

Nor does the testimony received during the legislative hearings contain any conclusive indication that instead of a literal interpretation the phrase under consideration should be given some secondary meaning, perhaps, restricting it to advertising misrepresentations solely related to physical or zoological characteristics and attributes of fur articles. On the contrary, there was recognition in certain of the testimony as to enforcement problems then being encountered by the Commission in the administration of its Trade Practice Rules for the Fur Industry, particularly those directed against price misrepresentations. Two of those rules (Rules 25 and 29) had provisions similar to those in Rule 44.

The absence of references in the Act to pricing misrepresentations is nowise controlling. "[I]f Congress has made a choice of language which fairly brings a given situation within a statute, it is unimpor-

tant that the particular application may not have been contemplated by the legislators." *Barr v. United States*, 324 U. S. 83, 90 (1945). Furthermore, statutory expressions are to be broadly construed within the limitations of their literal meaning and the ascertainable legislative intent. The plain meaning of the statute will prevail as long as it does not lead to absurd results or clash with policy behind the legislation. *U. S. v. American Trucking Associations, Inc.*, 310 U. S. 534, 543 (1940).

In the circumstances here, moreover, we are convinced that the Congress' goal was a legislative solution of the fur industry's major problems including that of deceptive pricing representations and that, when enacting this legislation, its intention was to proscribe all deceptive advertising practices in connection with the sale of fur articles.

The respondents' appeal is without merit and denied accordingly. The appeal of counsel supporting the complaint challenges, among other matters, the initial decision's failure to prohibit all of the practices covered therein, including particularly respondents' pricing practices, as violative of the Fur Products Labeling Act and the rules and regulations promulgated thereunder. His appeal is granted. Having determined that the initial decision was deficient in that and related respects, we, in the discharge of the ultimate responsibility for determining the merits of this proceeding and in the interests of conforming its disposition with the views expressed in this opinion, have appended hereto the Commission's findings as to the facts, conclusions and order to cease and desist. These are adopted in lieu of the initial decision of the hearing examiner which is hereby vacated and set aside.

Commissioners Gwynne and Mason dissented in part in the decision herein.

OPINION OF CHAIRMAN GWYNNE, DISSENTING IN PART

By GWYNNE, Chairman:

I dissent from that part of the majority opinion which grants the appeal of counsel supporting the complaint. It is my view that Rule 44 of the Rules and Regulations under the Fur Products Labeling Act is not warranted by anything in that law.

The hearing examiner found that certain practices of respondents violated the Fur Products Labeling Act and issued an order accordingly. He also found that respondents had made certain other representations which were contrary to the Federal Trade Commission Act and issued an order in accordance with such findings.

I agree with his findings and order.



1307

Opinion

Authority for Rule 44 and for the conclusion of the majority is claimed to be found in the underlined portion of Section 5 (a) (5) of the Fur Products Labeling Act. Section 5 (a) (5) is as follows:

“(5) contains the name or names of any animal or animals other than the name or names specified in paragraph (1) of this subsection, *or contains any form of misrepresentation or deception, directly or by implication, with respect to such fur product or fur;*”

The majority opinion contains the following:

“There can be no doubt but that the underscored language, when literally read, comprehends all forms of misrepresentation or deception in connection with the advertising of furs and fur products. That this phrase constitutes a separate and substantive rule of law rather than a mere amplification of other requirements of the Act also is clear.”

On the basis of this interpretation, the majority opinion “vacated and set aside” the initial decision and adopted new findings in lieu thereof and issued a new order. Among other things, the order prohibits advertising which represents directly or by implication:

(a) That the regular or usual price of any fur product is any amount which is in excess of the price at which respondents have usually and customarily sold such products in the recent regular course of their business;

(b) That a sale price enables purchasers of fur products to effectuate any savings in excess of the difference between the said price and the price at which comparable products were sold during the time specified or, if no time is specified, in excess of the difference between said price and the current price at which comparable products are sold;

(c) That an amount set forth on price tags, or otherwise relating or referring to fur products, represents the value or the usual price at which said fur products had been customarily sold by respondents in the recent regular course of their business, contrary to fact;

(d) That any such product is of a higher grade, quality, or value than is the fact, by means of illustrations or depictions of higher priced or more valuable products than those actually available for sale at the advertised selling price, or by any other means;

(e) That any of such products are:

1. from the stock of a business in a state of liquidation, contrary to fact;

2. from the stock of a business recently consolidated with another, contrary to fact.

Such an order is justified under the Federal Trade Commission Act but not under the Fur Products Labeling Act.

The interpretation placed by the majority on the Fur Products Labeling Act violates well-established principles of statutory construction and is contrary to the intent of Congress in passing the Act. The clause in question, instead of being a separate and substantive rule of law is limited by the specific provision which precedes it. This is in accordance with the principle of *ejusdem generis*. "*Ejusdem generis* means literally of the same kind or species." *People v. Machalski*, 115 N.Y.S. 2d 28.

"The principle (*ejusdem generis*) requires that general terms appearing in a statute in connection with precise, specific terms shall be accorded meaning and effect only to the extent that the general terms suggest items or things similar to those designated by the precise or specific terms. In other words, the precise terms modify, influence or restrict the interpretation or application of the general terms where both are used in sequence or collocation in legislative enactments." *State v. Thompson* (Washington 1951), 232 P. 2d 87.

"The rule is based on the supposition that if the legislature had intended the general words to be considered in an unrestricted sense, it would not have enumerated the particular things." *Smith v. Higginbotham* (Maryland 1946), 28 A. 2d 754.

The law itself and the Congressional history also throw light on the proper interpretation of the section in question. Paragraphs (1), (2), (3), and (4) of Section 5 (a) contain specific provisions prohibiting false advertising relating to the character or quality of the fur itself. Paragraph (5) contains another specific provision, to wit, that the advertisement shall not contain "the name or names of any animal or animals other than the name or names specified in Paragraph (1) of this subsection." Congress evidently concluded that some amplification of that provision was necessary. For example, deception might be caused as to the character or quality of furs by means other than the use of names; pictures or slogans or other means could be employed which might not come within the strict category of "names".

Paragraph (6) prohibits an advertisement which "does not show the name of the country of origin of any imported furs or those contained in a fur product." If the majority view is correct, Paragraph (6) is not necessary and adds nothing to Section 5. In fact, that is true of the other paragraphs in the section.

I fail to see how the use of the disjunctive "or" supports the majority view. The word "or" is common in many statutes where the principle of *ejusdem generis* was held applicable. Nor can I see any analogy between the section here considered and Section 15 (a) (2) of the Federal Trade Commission Act. There is nothing in the Act

1307

## Opinion

or in the legislative history to indicate that Congress intended the Fur Products Labeling Act to cover the types of deceptive advertising heretofore set out.

I would adopt the findings and order of the hearing examiner and deny both appeals.

Commissioner Mason joins in this dissent.