order to divest to be hereafter fixed by order of the Commission and jurisdiction being retained for that purpose.

IN THE MATTER OF

SAMUEL A. MANNIS AND COMPANY

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

Docket 7062. Complaint, Feb. 12, 1958—Decision, Feb. 9, 1960

Order requiring the concessionaire of the fur department of a Pasadena department store, added by the purchaser of the store's merchandise following its bankruptcy, to cease violating the Fur Products Labeling Act by failing to comply with labeling, invoicing and advertising requirements including failure to use the term "Second-Hand," naming other animals than those producing certain furs, and representing himself falsely as the manufacturer of his fur products; by advertising sales below cost, fur products as from a distress source and as guaranteed, etc.; and by failing to keep adequate records as a basis for pricing claims.

Mr. John J. McNally supporting the complaint.

Mr. Jerome Weber, Mr. Benjamin Held and *Mr. David Hoffman* of Los Angeles, Calif., for respondent.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

Commission complaint issued February 12, 1958, and duly served charged respondent with violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and also with the violation of the Federal Trade Commission Act. Respondent's answer admitted the first and second paragraphs of the complaint. The second paragraph so admitted charged respondent with the sale, advertising, transportation and distribution in commerce of fur products and contained other allegations, which admitted, give the Commission jurisdiction in this proceeding. The answer also admitted that one of his advertisements contain certain representations alleged and quoted in the complaint. All other allegations of the complaint were denied.

On April 14, 1958, the original date set for hearing in Los Angeles, California, the matter was continued over until April 21, 1958. Thereafter, beginning April 21, 1958, seven days of hearings were held for the taking of evidence in support of and in opposition to the allegations of the complaint. Both sides then rested their case insofar as the taking of evidence was concerned.

During the hearings the following facts were developed: There was another Federal Trade Commission proceeding pending entitled "In the Matter of Mannie Feigenbaum, Inc., a corporation, and Manuel Feigenbaum, individually and as an officer of said corporation." The latter proceeding bears Docket No. 7064, and is in effect a companion case to this one. That is, much of the evidence in this proceeding is applicable to the proceeding in Docket No. 7064. Respondents in both proceedings were represented by the same counsel, and the same attorney was counsel supporting the complaint in both cases. After considerable discussion both on and off the record, it was agreed on the record between counsel on April 21, 1958, that these two proceedings be consolidated for the purpose of taking the evidence. Thereupon, on page 104 of the record, the hearing examiner, with consent of counsel directed such consolidation and further directed that all of the testimony previously taken and to be taken thereafter in both cases be made a part of the record in each case. Later, also with consent of counsel the reporter was directed to mark each exhibit received as an exhibit in both Docket Nos. 7062 and 7064.

Both sides were represented by counsel at all of the hearings and given full opportunity to introduce evidence pertinent to the issues, examine witnesses and argue points of law and evidence. Both sides were given the opportunity to and did file proposed findings, conclusions and orders together with the reasons therefor.

This proceeding is now before the hearing examiner for an initial decision upon the entire record including the pleadings, evidence and the proposed findings, conclusions and orders and the reasons therefor. All such proposed findings, conclusions and orders not hereafter adopted, found or concluded are hereby specifically rejected.

Upon the entire record and from the observation of the witnesses while testifying, the hearing examiner makes the following findings as to the facts, conclusions and order.

FINDINGS AS TO THE FACTS AND CONCLUSIONS

The respondent is an individual trading as Samuel A. Mannis and Company. He is engaged in the retail sale of fur coats, stoles and other fur products, with his principal place of business now being located at 6340 Hollywood Boulevard, Hollywood, California. He has been engaged in this business for the past eight or ten years. Respondent's salesmen frequently take furs from the store at the above location to the homes of prospects for the purpose of making a sale, in addition to the business done at the store. Respondent has also conducted fur auctions at other locations and has sold furs

as a concessionaire in other stores at other locations. It is estimated that in all his different operations he has sold approximately 50,000 fur products during the past ten years. The T. W. Mather operation is typical of his business as a concessionaire.

A department store in Pasadena, California, operating under the name of T. W. Mather's went into bankruptcy and its assets were sold under court order to the highest bidder. Another concern, Mannie Feigenbaum, Inc., one of the respondents in Commission Docket No. 7064 was the successful bidder. This store had a fur department. Mannie Feigenbaum, Inc., decided to conduct a sale on the premises which was highly advertised. In addition to the bankrupt stock it was decided that other goods should be brought into the store and sold during the sale.

Mannie Feigenbaum, Inc., contacted the respondent Samuel A. Mannis. As a result the respondent Mannis brought fur coats and other fur products into the T. W. Mather store and sold them there. The arrangement was that respondent Mannis would pay Mannie Feigenbaum, Inc., 10% of his gross sales as rent, with a certain minimum rent agreed upon. The sale was advertised under the name of T. W. Mather's. Respondent Mannis' furs were advertised in the same advertisement with the goods being offered in the other departments of the store. No prospective purchaser could tell from the advertisements whose furs were being offered for sale. The only name appearing was that of T. W. Mather's. Respondent Mannis also paid his proportionate part of the advertising for the sale, based on the amount of space used to advertise his fur products and a certain proportion for his part of the general advertising of the sale. The T. W. Mather sales slips were used, on which were placed a code number, assigned to Mannis, so that the copy of the sales slips revealed to Mannie Feigenbaum, Inc., that the particular sale was made by Mannis or his employees.

The advertising copy for the fur department used in the store advertisements was prepared by a Mannis employee, authorized by Mannis, and turned over to the Mannie Feigenbaum, Inc., employee who had charge of advertising for the store.

Some of the other departments in the store were let out to concessionaires like Mannis and some were run directly by Mannie Feigenbaum, Inc. The record does not show how long the sale lasted but it evidently did last more than 30 days.

Removal of Labels

The first charge in the complaint is that respondent has removed or caused or participated in the removal of, prior to the time certain

fur products were sold and delivered to the ultimate consumer, labels required by the Fur Products Labeling Act to be affixed to such products.

The evidence on this is limited to two sales, one to the witness Velma Welch and the other to the witness Nancy Finley. Having heard the witness Nancy Finley testify the hearing examiner is of the opinion that her testimony on this issue should be disregarded. The facts on this issue in regard to the Welch sale are as follows:

After seeing one of respondent's newspaper advertisements in January 1957, Miss Welch called respondent's store and indicated that she was interested in purchasing a mink stole within a certain price range. In response to her call, respondent's salesman Francis carried eight gaments to the Welch residence for her to choose from. She decided to buy one of them for the price of $525. This particular garment was one that respondent had on consignment, and still carried the manufacturer's tag or label on it. It was respondent's practice in regard to consigned merchandise, not to purchase the garment until he knew he had it sold. Such garments were not given an item number on respondent's stock record book until they were sold. They were not given a Mannis tag or label. The manufacturer's tag or label was left attached to the garment.

Miss Welch gave Francis a check for $125 on the purchase price and he gave her what has been called a temporary invoice, describing the garment, stating the purchase price, giving credit for the $125 and reciting the terms agreed upon for the payment of the balance. Miss Welch wanted the garment left with her and this was done after Francis had obtained permission from the store manager over the phone. Before he left the cape, Francis took the manufacturer's tag or label from it and carried the tag back to the store with him for the purpose of using the information on it in writing up the sale on respondent's regular form.

The record does not show that Miss Welch ever received any other title papers although she did later receive an appraisal of the garment by respondent. She later tried to back out of the transaction and was told she could not do so. She still has the coat and has made the monthly payments called for by the "temporary invoice" left with her.

On the basis of these facts, counsel supporting the complaint contends that Section 3(d) of the Fur Products Labeling Act has been violated by removal of the manufacturer's tag or label prior to the time the fur product was "sold and delivered to the ultimate consumer."

The general rule is that title to personal property passes from the seller to buyer with delivery of the goods, unless from the conduct

of the parties or other circumstances surrounding the transaction a different intention is ascertained.[1] Under the facts shown here the sale was consummated at the Welch residence and at the time of the removal of the tag or label the fur garment had been sold and delivered to the ultimate consumer. Hence there was no violation of the law. It is so found.

"Original by House of Mink"

Paragraph 4 of the complaint charges labels sewn in some of respondent's fur products, containing the above wording, as misbranding in violation of Section 4(1) of the Fur Products Labeling Act. Paragraph 15 of the complaint charges the use of statements in advertising bearing this wording as false advertising in violation of Section 5(a)(5) of said Act. These two charges will be considered together.

For approximately two years prior to the hearing in Los Angeles, California, in April 1958, respondent used the name "House of Mink" as a trade name. This was registered in the County of Los Angeles as a trade name of respondent. He recently changed the trade name in use to "Furs by Mannis." While respondent was using the "House of Mink" trade name, he had woven labels sewed into some of his mink fur products reading as follows:

Original
by
House of Mink
hollywood—california

Also during that period of time, in advertisements in newspapers that were disseminated in interstate commerce, respondent's advertisements contained a picture of the label. Below that picture we find the following:

Here is the label you will see in the most fabulous furs now brought to you EXCLUSIVELY by one of the largest furriers in America, at PRICES that are breathtaking, and unbelievably LOW.

The words "Original by House of Mink" as used in labeling and as used in the advertising suggest that garments bearing that label are exclusive creations, designed by respondent, and that the woman wearing such garment may rest assured that she will not see another similar garment. There is testimony in the record that this label went on all new mink garments placed in stock; that respondent

[1] *Louisville & Nashville Railroad Company v. United States*, 267 U.S. 305; *Pacific Electric Railway Company v. United States*, 71 F. Supp. 987, 989, affirmed 172 F. 2d 222.

Mannis while not physically designing any garments had "mental thoughts" about the garments he wanted which he communicated to his suppliers; that when offered new mink garments by his suppliers, Mannis would suggest that the coat should be longer or that the collar should be higher; that Mannis picked out of the garments offered by his suppliers, those that fitted his ideas as to what he wanted. From these various statements and others in the record, the truth seems to be that Mannis had two mink coats made according to his designs for a particular customer. Other than that he did no designing or manufacturing. He did want and tried to see that only high class and stylish mink garments bore this label. When he found what he wanted among the garments offered by his suppliers, he took them and the label was attached. To other suppliers he would say, "I don't like the length of that coat" or "I don't like the collar, etc." That supplier would bring back other garments, either out of stock or that had been altered to meet Mannis' criticism. Mannis would buy them and the labels would be attached. The record shows that some of the garments bearing the label were trade-ins and some were from a lot generally conceded not to be high class merchandise. They probably were exceptions. In any event, however, at least the majority of the garments bearing the label "Original by House of Mink," were not designed by Mannis, but were high class garments from the stock of Mannis' suppliers.

It is found that garments bearing the label "Original by House of Mink" were falsely and deceptively labeled in violation of Section 4(1) of the Fur Products Labeling Act. It is further found that the advertising with a picture or facsimile of the label in the context in which it was used was false advertising in violation of Section 5(a)(5) of the Act. This label and advertising in evidence had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public. There is no necessity for proof of actual deception or additional proof of such capacity and tendency.[2] The respondent's contentions to the contrary are rejected.

Other Violations of Section 4 and the Rules and Regulations of the Commission in Regard to Labeling

These violations are charged in paragraphs 5 and 6 of the complaint. The evidence consists of certain labels on tags and the testimony in regard to them. Commission exhibits 41A through H

[2] *Zenith Radio Corporation* v. *F.T.C.*, 143 F. 2d 29, 31; *Charles of the Ritz Distributors* v. *F.T.C.*, 143 F. 2d 676, 680.

were tags or labels taken from garments of respondent at the T. W. Mather's store during the sale.

The Commission investigator, Edwin H. Anderson, testified that Commission exhibits 41A through H were the original tags taken from garments by respondent's employee, Mr. Weiss, on June 8, 1956 and given to him at his request. These garments were among those of respondent's in stock at that time at the T. W. Mather's sale in Pasadena. He further said that Mr. Weiss replaced these tags with other tags in an attempt to show the required information in a proper manner. The hearing examiner has looked at each of these tags, Commission exhibits 41A through H and they are each deficient, that is, each of these tags do not contain all of the information required in the manner required by the Act and the rules and regulations promulgated by the Commission. For the respondent's benefit, Mr. Anderson in his testimony explained the deficiencies of each tag.

Anderson stated on direct examination, and it is brought out more clearly on cross, that there were also other tags on the garments from which these tags, Commission exhibits 41A through H were taken. Anderson stated that none of these other tags contained all of the required information in the proper manner, and for that reason he did not take the other tags. Respondent's Manager Weiss testified that he was familiar with the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and he was equally positive that the other tags which Anderson admits were on the garments did have on each of them all of the required information. This was a direct statement in addition to other general statements. Aside from being contradicted by Weiss on this point, to accept Anderson's testimony that these garments were misbranded, is to accept his conclusion, without any other evidence to support it, that the tags remaining on the garments did not comply with the Fur Products Labeling Act and the Rules and Regulations. In certain cases opinion evidence of experts may be accepted upon the ultimate issues before the Commission. This however, is not that type of case. The proof therefore is lacking to support a finding that the garments from which Commission exhibits 41A through H were taken, were misbranded.

Commission exhibits 42 through 56D were all duplicates of tags attached to respondent's fur garments in stock at his store on Hollywood Boulevard during the month of June 1957. These tags are from garments selected at random in respondent's store. In this instance where there was more than one tag on a garment, Anderson secured duplicates of all the tags on each of the garments se-

lected and they are all in evidence. Weiss' general statement that all fur products in stock bore more than one tag does not stand up against Anderson's specific testimony in regard to the garments from which these particular tags were taken.

In this series where a garment carried more than one tag, they are given sub-numbers, such as 45A and B.

Commission exhibits 48A and B being all the tags attached to one garment violate Section 4(2) in showing "Alaska Seal" which is not a name listed in the Fur Products Name Guide.

Commission exhibits 43, 44, 52 and 53 violate Section 4(2) in failing to show the name or other identification issued and registered by the Commission of one or more persons who manufactured these fur products for introduction into commerce, introduced them into commerce, advertised or offered them for sale in commerce or transported or distributed them in commerce. On some of these tags there are numbers, but under the evidence they are clearly item numbers of the fur products, rather than identification numbers issued by the Commission.

Commission exhibits 45A and B, 46A and B, 47A and B, 48A and B, 49A and B, 50A and B, 51A and B and 54A and B violate Section 4(2) in that all the information required is not shown on one tag on each garment. This section of the Act says particularly that the fur product is misbranded if there is not affixed to it *a label* giving the required information. Rules 29 and 30 interpret this provision. The purpose of the labeling provisions of the Act would largely be nullified if the required information could be spread over several tags.

Commission exhibits 47A and B, and 54A and B further violate Rule 4 insofar as it applies to labeling in that some of the required information is set forth in abbreviated form.

Commission exhibits 45A and B and 46A and B use the term "blended." Commission exhibits 66 and 67 being tags taken from one fur product also use the term "blended." If this means that these fur pieces have been pointed, bleached, dyed or tip dyed it is in Violation of Rule 19. If it means anything else it is in violation of Rule 30 which states the sequence in which the required information on the label shall be set out, and also in violation of Rule 29(a) in regard to mingling required and non-required information. These rules and others were promulgated by the Commission governing the manner and form of disclosing information required by the Act. The Commission is directed to do this by the Act. The Court has held that such rules are a valid exercise of the Commission's

power and that violation thereof comes within the prohibitions of the Act.[3]

Mr. Weiss testified that pink labels (or red as they were called by counsel supporting the complaint) were only put on used garments. Commission exhibits 42, 43 and 44 were such colored labels but did not otherwise show that the garments had been used. This was in violation of Rules 21 and 23.

Commission exhibits 42, 43, 44, 52 and 53 contain non-required information mingled with required information in violation of Rule 29(a). For instance Commission exhibit 43 says "White Mink Cape." The word "Mink" is required information but the words "White" and "Cape" are not.

Respondent argues that if there have been any violations of the labeling provisions of the Act they were of minimal quantity and quality. It will be remembered that the series of labels, Commission exhibits 42 and 56D were a random selection from respondent's stock at his store on Hollywood Boulevard in Los Angeles and did not purport to be all the defective labels on the garments in that stock. The deficiencies mentioned were clear cut violations.

False Invoicing

The charges in the complaint in regard to false invoicing of respondent's fur products are contained in paragraphs 7 through 9. The invoices in evidence offered in support of these charges are Commission exhibits 11 through 17, 34, 38, 71, 73, 74, 76, 78, 80, 82, 83, 84, 86, 88, 89 and 91. Unlike the labels in evidence, these invoices appear to be the result of a systematic effort on the part of the Commission investigator, Mr. Anderson, to discover all the invoices of respondent which he considered to be defective during certain periods of time. They cover the T. W. Mather Store sale, the Crenshaw or White Front sale and sales made at respondent's own store on Hollywood Boulevard. Many of them alleged to be deficient are what are called "temporary invoices." The evidence is not clear as to whether they were replaced with regular invoices containing the required information, and if so, how soon. Other claimed irregularities are rather far-fetched. For instance, one invoice, Commission exhibit 82, is claimed to offend because instead of "Muskrat" the name of the fur was inadvertently spelled "Mustrak." Again it is argued that the invoice of a fur garment was defective in failing to show that it was a used garment, because the record shows that respondent acquired it as part of the purchase

3 *Jacques DEGorter et al v. F.T.C.*, 244 F. 2d 270.

price on another fur product. The traded in garment may have itself been purchased that day or the day before. It may or may not have been used. The evidence is not clear on this point. There is a difference between defective labeling or misbranding and false invoicing. If a label on a garment is defective it may be corrected while the garment is still in stock, provided there is a desire to label correctly. Once an invoice is written it goes immediately into the customer's hands and no inadvertent error can be corrected. Considering all the alleged defects in the invoices and their number plus the amount of business done by respondent, the hearing examiner cannot say that there was substantial proof of false invoicing by respondent.

False Advertising

The charges of false advertising are set forth in paragraphs 10 through 21 of the complaint. It was stipulated that the newspapers carrying respondent's advertising, copies of which were introduced in evidence including those particular issues of those newspapers were disseminated in commerce. A glance at the advertisements in evidence shows that they were intended to aid, promote and assist directly or indirectly in the sale and offering for sale of the fur products so advertised. That the advertisements did aid, promote and assist in the sale and offering for sale of said fur products is evident from the record. If these advertisements are false or do not otherwise comply with the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, a violation of the Act has been established.

Paragraph 11 of the complaint charges among other things that respondent's advertising contained information required under Section 5(a) of the Act and the Rules and Regulations in abbreviated form in violation of Rule 4.

The record contains a stipulation to the effect that in a number of instances respondent's advertisements in the Los Angeles Examiner showed the abbreviation of "Jap. Mink" for "Japanese Mink" and the abbreviation "Sqrl" for "Squirrel." In at least one instance in a Los Angeles Times' advertisement the abbreviation "Sqrl" appeared and also "Pers. Lamb."

The defense to this was that the copy for all advertisements had the required information spelled out in full, but in setting up the advertisement the newspapers frequently substituted the abbreviations, without authority from respondent in order to get the advertisement into the space purchased. In fact the advertising manager of the Los Angeles Examiner testified to this effect in regard to

the classified advertisements in his paper. He further said that respondent had complained of this being done. According to the advertising manager the abbreviations occurred because the advertising copy furnished by respondent would not fit into the space purchased without abbreviation. It appears that this went on for some time and for all the record shows may still be going on. The answer to this is for the respondent to either purchase more space for his advertisements or cut down on the number of words. The respondent has been paying for all the advertisements in which the abbreviations occurred and has gotten the benefit of them. Respondent cannot repeatedly accept the benefits of a violation of the law under these circumstances and then say he was not a party to the violation.

Paragraph 11 of the complaint also charges that respondent's advertisements were deceptive in failing to show that the fur products offered were second hand in violation of Section 5(a)(2) of the Act and Rules 21 and 23.

In support of this it is argued that the record shows that many garments sold as new were trade-ins. The record of sales compiled by the witness Anderson, Commission exhibits 94–102, does not show a sale of a new Mink garment for as little as $99, while during the same period of time, respondent was advertising Mink garments from $99 up, without any indication that they were used garments. These facts are not sufficient to serve as the basis for an order. However there is more. Anderson testified from notes made at the time of the transaction that on July 14, 1957 he showed respondent's manager, Mr. Weiss, Commission exhibit 68, a newspaper advertisement published on July 14, 1957, and asked to be shown one of the Ranch Mink coats advertised therein for $598. The coat shown him was a used garment. Anderson said he then inquired whether there were any new Ranch Mink coats in stock for $598 and Weiss replied that there were not. The advertisement makes no mention of any of the garments offered being used. From memory, Weiss denied telling Anderson that there were no new Ranch Mink coats in stock for $598. However, Anderson's testimony, based on notes made at the time is more credible. It is therefore found that respondent has advertised fur products for sale, without revealing that they were used, contrary to Rules 21 and 23.

Paragraph 12 of the complaint charges respondent with falsely advertising fur products at cost or below in violation of Section 5(a)(5) of the Act and Rule 44(a). Paragraph 18 charges that respondent, through the use of percentage savings claims, such as "save up to 60%" falsely represented that the regular or usual retail

prices charged by respondent for fur products in the recent regular course of his business were reduced in direct proportion to the percentage saving stated, in violation of Section 5(a)(5) of the Act.

Various advertisements in evidence say "Save 50% or more, some at cost, some below cost." "Save up to 50% or more." "Save up to 50%." "Reduced from 40% to 60%, many at and way below cost." "Some furs at cost, some below." In addition there is in evidence by agreement a long list of newspaper advertisements published in 1956 and 1957 in which respondents offered his furs "at cost or below."

It is found that these representations in the context in which they appear, represent directly and by implication that respondent was offering the furs advertised at below the cost at which he had purchased them and that the regular or usual retail prices charged by respondent for fur products in the recent regular course of his business were reduced in direct proportion to the percentage savings stated in the advertisements.

The witness Mrs. Velma Welch bought her fur coat from respondent because of seeing an advertisement in January 1957 offering furs "at cost and below cost." She paid $525 for it.

The witness John P. Franklin was offered as an expert witness on the cost and value of furs. At the time he testified he had been a fur buyer for the Broadway Department Store for three years and had been in the fur business for 26 years. His appraisal of the retail value of the Welch garment at the time and place of sale was between $299 and $359. He further said that garments of that type at the time of sale sold wholesale in New York for between $185 and $195. Locally in Los Angeles at the time of sale, if bought through a jobber, the wholesale price was between $210 and $225.

Daniel J. Papaport, another expert witness, had been in the retail and wholesale selling and manufacture of fur garments for 50 years, in California since 1933. He fixed the retail value of the Welch coat at the time and place of sale between $300 and $375, not including the tax.

Malvin Myron, another fur manufacturer and wholesaler, who sells very little at retail, said that the price of a fur garment depends on where it is bought and how much the traffic will bear. The sale of furs both at wholesale and at retail is a negotiated sale. He finally said the garment *could* be sold in a store at anywhere from $575 to $750 without tax.

Mrs. Carolyn Rider, an employee of the Commission in Los Angeles testified that in June 1957 she went to the store of respondent

with one of his advertisements (Commission exhibit 58) offering fur garments at "cost or below" and asked respondent's salesman, Sidney Stevens, to see some grey mink stoles being offered at cost or below. She was shown two garments, one at $375 and the other at $575 and was assured that these prices were "at cost or below." She wrote down the prices and the stock numbers from the tags on the garments, and she testified from the notes made at the time of the transaction. Commission investigator Edwin H. Anderson testified that from an examination of respondent's stock record book, which shows the stock numbers, both of the stoles shown Mrs. Rider cost respondent less than the prices quoted to her by Mr. Stevens. He also testified from notes made at the time of his examination of the stock record book.

Through Commission investigator Anderson, there were also put in evidence tabulations made from respondent's records of all the sales of new Mink garments made during certain periods of time and at certain locations where respondent was conducting sales. These periods of time correspond with the dates of advertisements in evidence offering fur garments at cost or below. These tabulations show that no such garments were sold at cost or below.

Respondent's answer to all of this was a general denial coupled with the statement that he had on hand at all times many furs that were out of date and undesirable that he was willing to sell below what he had paid for them. This may be true, but the advertisements in question, or at least some of them, leave the impression that the best furs, respondent had in stock, those bearing the "Original by House of Mink" label, as an illustration, were being offered below cost and at the savings figures shown in the advertisements.

The preponderance of the evidence on this point is to the effect that respondent's advertisements offering furs "at cost and below" and his advertisements of percentage savings claims, in the context in which they appeared, were false as alleged in the complaint.

Paragraph 13 of the complaint charges respondent with false advertising of furs in representing in an advertisement on April 17, 1957 that the furs offered were those of a manufacturer and jobber willing to sacrifice his stock for immediate cash.

The facts are that respondent did have a letter making the statements quoted in paragraph 13 of the complaint and did have the furs from this manufacturer or many of them in stock on April 17, 1957 when the advertisement was published. The letter was dated March 5, 1956. However, respondent testified that through many telephone conversations subsequent to the date of the letter the plea of urgency in disposing of the furs for cash regardless of the price

was maintained. This testimony is undisputed. The wording and arrangement of the advertisement (Commission exhibit 60) however belies respondent's explanation. It is headed by a picture of respondent's store followed by these words:

One of America's Largest Furriers. Manufacturers and Jobbers Need Immediate Cash. We quote from a jobber's letter: "I implore you now to dispose of these goods immediately, regardless of cost or losses. I am not interested in profits right now. Time is of the essence. I must raise cash! Joe Fadin & Son New York City."

There follows a description of the furs offered for sale which are nothing but Mink. They are described as "Magnificent, New, Highest Quality, Advanced Styles at Low Prices and in Every Color."

Anyone reading this advertisement would come to the conclusion that the furs described in the advertisement were those obtained from Joe Fadin & Son. Elsewhere in the record Mr. Mannis had described the Joe Fadin & Son furs as Muskrat, Marmot and Squirrel and said that the public were all so "Mink minded * * * so the only success we had (in disposing of any of them) was at a sale down in San Diego * * * where we did manage to sell, I don't know, four or five pieces."

It is evident therefore, that respondent was using the Joe Fadin & Son letter to lead the public to believe contrary to the fact that the garments Joe Fadin & Son wanted disposed of "regardless of cost or losses" were of new, highest quality and advanced styles.

From the evidence it is apparent that the advertising quoted in paragraph 15 of the complaint referred to some of the furs shipped to respondent by Joe Fadin & Son. Respondent had been receiving furs from this manufacturer for about ten years, giving his note for them with the right to return the furs, or any of them unsold and receive credit on his note. About five years prior to the date of his testimony, respondent tried to return some of the furs but Joe Fadin & Son would not receive them. Respondent thought he finally established his right to return the furs and receive credit for them a number of years ago but the matter has resulted in litigation yet unsettled. In the meantime this manufacturer continually urged respondent not to return the furs but to sell them at a low price and account to the manufacturer for the proceeds of the sale less his profit. This happened long before the letter of March 5, 1956 was written. As stated before, most of these furs were out of date in style and most of them were not Mink furs. As early as 1955 they had become a drug on the market. It was in this situation that respondent in December 1955 ran two advertisements containing the statement "Save by buying direct from the wholesale

manufacturer who needed cash." There is nothing in these two advertisements, unless we consider the heading of each "Samuel A. Mannis & Company, Fur Liquidators," to apprise a purchaser or prospective purchaser that Samuel A. Mannis & Company was not the wholesale manufacturer who needed the cash. In fact these two advertisements (Commission exhibits 62 and 63) had the capacity and tendency to cause a substantial portion of the purchasing public to think that respondent was that manufacturer and wholesaler.

Respondent is not a manufacturer and wholesaler and did not manufacture the furs offered in these two advertisements. Even if it could be considered that in selling the furs that come from Joe Fadin and Son, respondent was only acting as agent for that manufacturer, as contended by the respondent, the advertisement is also deceptive for another reason. The reference to "thousands of furs of every style and description" and the emphasis on Mink make it fairly inferable that many of the furs so advertised were not a part of the stock received from Joe Fadin & Son.

As alleged in paragraph sixteen of the complaint respondent constantly advertised in the newspapers "3 years guarantee" on furs without specifying or disclosing the nature and extent of the guarantee. When furs were bought from respondent, on the back of sales slip the following is stated. "Three year guarantee on rips and tears." Thus the terms of the guarantee, not shown in the advertising, are limited to rips and tears in the sale.

The word "guarantee" as used in the advertisements is incomplete. The Commission has held many times that the use of the word "guaranteed" in advertising without disclosing the nature and extent of the guarantee, is deceptive. The fact that the nature and extent of the guarantee is revealed at the time of the sale is no defense.[4]

Paragraph 17 of the complaint charges false advertising of free storage when in fact purchasers of fur products were required to pay storage under the guise of insurance.

The record establishes that respondent did furnish storage for fur products without charge to its customers. If they desired to insure the garments, they were charged for that. There is some testimony to the effect that other sellers of furs, not advertising free storage, charged the same amount for storage and insurance as respondent charged for insurance. Although the owners of most fur products may desire them insured when stored, there is no substantial evidence to the effect that respondent's offer of free stor-

[4] *Carter Products, Inc., et al. v. F.T.C.*, 186 F. 2d 821 and cases therein cited.

age led the purchasing public to believe that the garments would also be insured without charge, or had that capacity and tendency. This charge of false advertising is dismissed.

Paragraph 19 of the complaint charges that respondent falsely advertised "Written bonded appraisal with all furs"; that the appraisal figures given when a sale was made were fictitious in that they did not represent a bona fide appraisal and did not represent the true retail value, nor the regular and usual retail selling price.

The evidence shows that the representation alleged occurred in many if not all of respondent's newspaper advertisements in evidence. The evidence further shows as a whole that while the appraisals were not made out until a sale was completed, the salesmen did at times before the sale was completed tell the customer what the appraisal figure would be. In most instances the appraisal figure was higher than the selling price. It was contended by respondent that the garments were appraised at the highest figure he and his sales manager thought they could be sold for; that the variations in selling price of similar fur garments were so tremendous between department stores, specialty shops and other sellers that the fair retail market value of a fur garment had to be a very flexible thing; that appraisals were only for insurance purposes and that no insurance company had ever turned down one of respondent's appraisals.

Coupled with respondent's continual advertising of selling below cost and at large percentage savings figures, an appraisal far beyond the purchase price was a valuable adjunct in selling fur garments. The evidence and the inferences to be drawn therefrom show that many of the fur products sold by respondent could be replaced for a figure much less than the appraisal value. The highest figure for which a fur garment might be sold does not establish its true retail value. The fact that no insurance company has questioned respondent's appraisals has no bearing on the matter in view of the other evidence. The conclusion must be that respondent's appraisals were in many instances fictitious and did not represent the true retail value of the fur product sold. As used in respondent's business the advertising was deceptive and had the capacity and tendency to cause the customer to think the fur product was worth more than it actually was.

Paragraph 20 of the complaint charges respondent with falsely advertising that he had a stock of "thousands of furs to choose from" or "thousands of furs of every style and description." This language did occur in a number of advertisements in evidence. The size and character of respondent's stock of fur products necessarily

varied as it was sold and replaced and new purchases made by him. There is no question but what he did carry on hand a large stock of furs, some old styles which he had been unable to sell or return and some new styles.

At one time the commission investigator, Mr. Anderson, questioned respondent's manager, Mr. Weiss, about current advertising of "thousands of furs to choose from." At that particular time, they checked the stock record book and it showed 1,200 fur products in stock. Weiss stated, and it is undisputed, that a short time before the number of garments in stock had exceeded 2,000. Under the circumstances, with the large varying stock carried by respondent, the advertising challenged in paragraph 20 of the complaint is considered legitimate puffing and not deceptive.

The charges in paragraph twenty-one of the complaint concern advertising run by respondent as a part of the advertising of what is called the "White Front" sale. This is one of the instances in which respondent sold furs at another location than his own store, under arrangement as a concessionaire. It was similar to the T. W. Mather Store arrangement already described. The advertising challenged is in evidence. It was newspaper advertising and is as follows:

Distinctive Collection of
Furs
Including
Mink
in all Styles
Reduced from 40%
to 60% off . . .
Many at & Way Below Cost

3 year guarantee
and free storage

These furs are spectacular buy-out values from Fellman Furs of L.A. Country of Origin of Imported furs shown on label.

Respondent testified that the furs offered for sale at the White Front sale consisted of furs from his own inventory before the purchase of the Fellman furs plus those he had bought from Fellman when that concern went out of business. He couldn't say what proportion was from his own original stock or from the furs purchased from Fellman.

The way the advertisement is worded, it has the capacity and tendency to cause prospective purchasers to think that all the furs offered at the White Front sale were furs purchased at a "spectacular buy-out" from Fellman. This being untrue the advertising was deceptive.

Paragraph 22 of the complaint charges respondent with failing to maintain adequate records disclosing facts upon which respond-

ent's comparative prices and percentage savings claims, used in advertising, were based, in violation of Rule 44(e).

The manager of respondent's business, Mr. Weiss, who kept the records admitted on the witness stand that no such records were kept. Rule 44(e) requires such records to be kept. Therefore failure to keep such records was a violation of that particular rule.

The use by respondent of the false, misleading and deceptive statements and representations hereinabove found has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public and thereby induce the purchase of substantial quantities of respondent's fur products. As a result, substantial trade in commerce has been unfairly diverted to respondent from its competitors and substantial injury has been and is being done to competition in commerce.

CONCLUSIONS

The acts and practices of the respondent hereinabove found are false, misleading and deceptive and are in violation of the Fur Act and the Rules and Regulations promulgated thereunder, and constitute unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

This proceeding is in the public interest, and an order to cease and desist the above-found unlawful practices should issue against respondent.

Respondent has not, as alleged in the complaint, violated the Fur Act or the Rules and Regulations by the removal of, or caused or participated in the removal of, prior to the time certain fur products were sold and delivered to the ultimate consumer, labels required by the Fur Products Labeling Act to be affixed to such products; or falsely invoiced certain said fur products as charged in Paragraphs Seven through Nine of the complaint; or falsely advertised free storage as alleged in Paragraph Seventeen of the complaint; or falsely advertised that he had "thousands of furs to choose from" or "thousands of furs of every style and description," as alleged in Paragraph Twenty of the complaint.

ORDER

It is ordered, That respondent Samuel A. Mannis, an individual, doing business as Samuel A. Mannis and Company, or under any other trade name or names, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, ad-

vertisement, offer for sale, transportation, or distribution in commerce of any fur product, or in connection with the sale, advertisement, offer 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 "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding fur products by:

A. Falsely or deceptively labeling or otherwise identifying any such product as having been manufactured or originally created or designed by or for respondent.

B. Failing to affix labels to fur products showing:

(1) 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;

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

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

(4) 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;

C. Using the term "blended" on labels to refer to or describe fur products which contain or are composed of bleached, dyed, or otherwise artificially colored fur.

D. Failing to set forth the term "secondhand used fur" on labels as required by Rule 23 of the Rules and Regulations.

E. Setting forth on labels affixed to fur products information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder which is abbreviated, handwritten, or mingled with non-required information.

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

A. Sets forth information required by Section 5(a)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form.

B. Fails to disclose that any such fur products contain or are composed of secondhand used fur, when such is the fact.

C. Represents, directly or by implication, and contrary to the facts, that any such fur products;

(1) Are being offered for sale at or below respondent's wholesale cost;

(2) Must be sold by respondent without regard to cost or loss;

(3) Could be purchased directly from the manufacturer or wholesaler, or without a middleman's profit;

(4) Were manufactured or originally created or designed by or for respondent;

(5) Are guaranteed, unless the nature and extent of such guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously set forth;

(6) Were secured by respondent from a source that is in financial or other distress;

D. Represents, through percentage savings claims or otherwise, that the regular or usual retail prices charged by respondent for fur products of similar grade or quality in the recent regular course of business have been reduced in direct proportion to such savings claims.

E. Uses the term "written bonded appraisal," or terms of similar import or meaning, to represent the value of fur products being offered for sale unless such valuations are based upon authentic and bona fide appraisals of value by qualified appraisers having no pecuniary or other interest in such fur products.

F. Sets forth comparative prices, savings claims, or representations as to selling or offering to sell at or below cost, unless there are maintained by respondent full and adequate records disclosing the facts upon which such claims and representations are based, as required by Rule 44(e) of the Rules and Regulations.

It is further ordered, That the allegations of the complaint that the respondent removed, or caused or participated in the removal of, prior to the time certain fur products were sold and delivered to the ultimate consumer, labels required by the Fur Products Labeling Act to be affixed to such products; or falsely invoiced certain said fur products as charged in paragraph 7 through 9 of the complaint; or falsely advertised free storage as alleged in paragraph 17 of the complaint; or falsely advertised that he had "thousands of furs to choose from" or "thousands of furs of every style and description" as alleged in paragraph 20 of the complaint be, and hereby are, dismissed.

OPINION OF THE COMMISSION

By ANDERSON, *Commissioner:*

The complaint in this matter charges respondent with misbranding, false invoicing and false advertising of fur products, the failure to maintain records and the removal of labels in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder. Counsel supporting the complaint has appealed from certain findings and rulings by the hearing examiner, from the dismissal of several allegations of the complaint and from the limited scope of the order pertaining to misbranding. Respondent has appealed from certain findings by the hearing examiner and from the order to cease and desist.

APPEAL OF COUNSEL SUPPORTING THE COMPLAINT

The first issue raised on this appeal concerns the dismissal of the charge that labels affixed to certain fur products were removed by respondent prior to the time such fur products were sold and delivered to the ultimate consumer. The hearing examiner ruled that the only credible evidence on this point was the testimony of one customer concerning a single transaction. He found in this connection that one of respondent's salesmen had removed a label from a fur garment sold by respondent, but that he had done so after the garment had been sold and delivered to the ultimate consumer. We have carefully reviewed the record concerning this particular transaction and can find nothing therein which would require us to reach a different conclusion. The evidence does not show that the label was removed prior to the consummation of the sale.

Counsel supporting the complaint argues, however, that we should hold that the Act was violated even if the label was removed by the salesman after the fur product had been sold and delivered to the ultimate consumer. This argument ignores both the wording of the charge on this point and the express language of the statutory provision upon which the charge is based. Subsection (d) of Section 3 relates to the removal or the mutilation of a required label "prior to the time any fur product is sold and delivered to the ultimate consumer." We do not agree with counsel supporting the complaint that this provision can be construed as prohibiting the removal of a required label after the fur product has been sold and delivered to the ultimate consumer, nor can we find any support for this interpretation in the legislative history of the Act.

It is also asserted in this appeal that the hearing examiner erred

in failing to find that certain garments were misbranded. The documentary evidence offered in support of these charges includes a number of original labels taken by the Commission investigator from garments in respondent's stock. The hearing examiner found that all of these labels were deficient in that they did not contain "all of the information required in the manner required by the Act." The investigator testified that there were other tags on the garments from which the defective labels had been removed but that none of these tags contained all of the information required by Section 4(2) of the Act. One of respondent's employees testified that each of the garments involved had affixed to it at least one tag containing all of the required information. The hearing examiner, after commenting on the fact that the investigator's testimony had been contradicted, stated that in the absence of any supporting evidence he could not accept the investigator's conclusion that "the tags remaining on the garments did not comply with the Fur Products Labeling Act and the Rules and Regulations."

We do not agree with this ruling. The investigator testified that none of the tags remaining on the garments contained all of the information required by Section 4(2). We think that the witness, with his extended experience in this field, was qualified to make such a determination on the basis of his observation of the tags.

The investigator's testimony is opposed by a general statement of the aforementioned employee to the effect that each of the garments in question was properly labeled under Section 4(2). The employee's testimony reveals, however, that his recollection of the occurrence was imperfect. He did not recall in this connection that the investigator had removed labels from the garments and he testified, incorrectly, that he had made copies of the labels.

Each of the labels which the investigator removed from the garments clearly purports to be the label containing the information required by Section 4(2). This fact, together with the investigator's testimony, leads us to believe that there were no other labels on the garments which contained all of the required information. Since the labels obtained by the investigator were deficient, as found by the hearing examiner, we are of the opinion that there is sufficient evidence to support the finding that the fur garments to which such labels had been attached were misbranded.

Counsel supporting the complaint also excepts to the dismissal of the charges pertaining to false invoicing. The points raised in this exception relate to the hearing examiner's appraisal of the evidence offered in support of these charges and to his holding with respect to so-called "temporary invoices." The record discloses that in

certain sales made by respondent, two invoices were issued to the purchaser. The first, or so-called temporary invoice, was prepared by the salesman and given to the purchaser at the time of the transaction. This invoice was later replaced by a second, or so-called permanent invoice. Many of the invoices alleged herein to be deficient are the "temporary" ones. Although the hearing examiner did not specifically rule that invoices of this type are not covered by the Act, he apparently felt that it was incumbent upon counsel supporting the complaint to show as part of his case that any defects in such a document had not been corrected by a second invoice. Such a showing, however, was not necessary. The term "invoice" as defined in subsection (f) of Section 2 of the Act includes any "written account, memorandum, list, or catalog, which is issued in connection with any commercial dealing in fur products or furs, and describes the particulars of any fur products or furs, transported or delivered to a purchaser, consignee, factor, bailee, correspondent, or agent, or any other person who is engaged in dealing commercially in fur products or furs." The "temporary" invoices issued by respondent, regardless of whether or not they were later replaced by permanent ones, come within this definition. Consequently, if the invoices as originally issued were defective, a later correction thereof would have no bearing on their legality under the Act.

We have examined the various invoices offered in support of the charges relating to false invoicing and have found therein violations of Sections 5(b)(1) and 5(b)(2) of the Act and of Rule 23 of the Rules and Regulations promulgated under the Act. Some of these instances of violation are of a technical nature, as found by the hearing examiner, but they nevertheless constitute false invoicing within the meaning of the Act and, consequently, should be prohibited.

Counsel supporting the complaint also urges that we reverse the hearing examiner's dismissal of the allegation that respondent falsely advertised "free storage" of fur garments. He also asserts that the hearing examiner erred in striking certain testimony relating to this charge. We think that a determination of the latter point is unimportant since we agree with the hearing examiner that the testimony in question would have very little probative value insofar as the allegation in question is concerned. Moreover, we concur with his holding that the evidence fails to sustain the charge that respondent had falsely advertised "free storage." There has been no showing that the public understands "free storage" to include free insurance, nor is there any proof that respondent failed to provide

free storage when requested to do so. There is evidence that respondent has, in fact, furnished storage for fur garments without charge. The appeal on this point is, therefore, denied.

Counsel supporting the complaint also urges that we overrule the hearing examiner's dismissal of the charge that respondent misrepresented the number of fur products he had in stock. The record discloses that respondent regularly advertised "thousands of furs to choose from," when the average number of fur products in his stock was considerably less than 2,000. At one point, the total was 1,263, of which 515 were used garments. We think it is clear that since respondent did not have at least 2,000 fur products in stock, his claim that a purchaser could make a selection from "thousands of furs" was a misrepresentation within the purview of Section 5(a)(5) of the Fur Act.

It is also asserted on this appeal that the order pertaining to misbranding is too limited in scope in that it does not require respondent to affix labels to fur garments showing all items of information specified in Section 4(2) of the Act. We agree that the order is not in accord with Commission policy as to the form of inhibition necessary to proscribe the practice of misbranding prohibited by this section. The order will therefore be modified to require respondent to observe all of the requirements of Section 4(2).

Counsel supporting the complaint has also taken exception to other rulings by the hearing examiner excluding evidence offered in support of certain allegations. In view of the fact, however, that these charges are supported by other evidence of record, a determination of the questions raised by these exceptions is not material to this decision and, consequently, will not be made.

RESPONDENT'S APPEAL

Respondent argues on appeal that the evidence does not support any of the findings that he had violated the Fur Act or the Rules and Regulations promulgated thereunder. He specifically asserts as grounds for his exceptions to certain of the findings that there has been no showing of intent to deceive the public and that there is no proof of actual deception resulting from various claims held by the examiner to be in violation of the statute. He also contends that many of the violations found by the hearing examiner were of "minimal quantity and quality."

We have examined the record in this proceeding and are of the opinion that, except as hereafter noted, the evidence fully supports the findings from which respondent's appeal is taken.

In a proceeding for violation of the Fur Act, it is not necessary to show that a respondent has knowingly failed to comply with the requirements of the Act or the Rules and Regulations promulgated thereunder or that he intended to deceive the public. It is also unnecessary to establish that any instance of misbranding, false invoicing or misrepresentation in advertising resulted in deception of the public, nor is it necessary to show that such a practice has the capacity and tendency to deceive the public. Respondent's argument that there has been a failure of proof on these points is rejected. Also rejected is respondent's contention that the violations involved here are so technical that they do not warrant the issuance of an order to cease and desist. As noted in the preceding discussion, the proved infractions viewed collectively constitute evidence of a course of action which in the public interest should be effectively prohibited.

The hearing examiner has found that respondent violated Rules 21 and 23 in the advertising and labeling of fur garments. His findings are based on evidence that respondent had offered for sale fur garments that had been used or worn by ultimate consumers without designating such garments "Second-hand" in advertising or on labels affixed thereto. This evidence supports a finding that respondent violated Rule 23, which requires that such garments be designated "Second-hand," but does not sustain the charge that he violated Rule 21 by failing to disclose that the garments contained or were composed of used fur.

Paragraph 18 of the complaint alleges that respondent, through use of such representations as "Save Up To 60%," falsely represented that the regular or usual retail price charged by respondent for fur products in the recent, regular course of his business were reduced in direct proportion to the percentage savings stated, in violation of Section 5(a)(5) of the Fur Products Labeling Act. The hearing examiner held that this allegation had been sustained but did not set forth in the initial decision the evidence upon which he relied to make this finding.

According to the proposed findings of counsel supporting the complaint, several tabulations of sales of fur products by respondent, which had been introduced in evidence, constitute proof that the usual and regular prices of the advertised products had not been reduced "Up To 60%." These tabulations, prepared by the Commission's investigator, show the gross profit made by respondent on fur garments sold at respondent's usual and regular prices and the gross profit realized by respondent during various periods when he advertised that fur garments offered for sale were reduced in

price. According to these tabulations, respondent took substantially the same markup on fur garments advertised at a reduction in price as that ordinarily taken by him in the sale of fur garments in the normal course of business.

The showing, however, that respondent took his normal markup during a "sale" does not in itself constitute proof that the prices at which the garments were offered for sale at such time had not been reduced from higher prices usually and regularly charged by respondent for such garments. Such a showing does not negate the possibility that respondent had obtained the advertised garments from a supplier at prices lower than those which he would ordinarily have paid for them. If respondent had paid less for the garments, his normal markup applied to his lower cost would result in retail prices lower than those usually and regularly charged by him for such garments.

The record fails to show at what prices the advertised garments were usually and regularly sold by respondent. It is our opinion, therefore, that there is insufficient evidence to support the allegation that respondent's usual and regular prices for the advertised products had not been reduced in direct proportion to the percentage savings claimed. The appeal on this point is, therefore, granted.

To the extent indicated herein, respondent's appeal and the appeal of counsel supporting the complaint are granted and in all other respects they are denied. As modified in accordance with this opinion, the initial decision is adopted as the decision of the Commission. An appropriate order will be entered.

FINAL ORDER

Respondent and counsel in support of the complaint having filed cross-appeals from the initial decision of the hearing examiner, and the matter having been heard on briefs; and the Commission having rendered its decision granting in part and denying in part the appeals of respondent and counsel in support of the complaint and directing modification of the initial decision:

It is ordered, That the paragraph beginning at the bottom of page 7 of the initial decision with the words "Anderson stated," be modified to read as follows:

Certain of the products to which these labels had been affixed were misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act. Three of the labels did not disclose the name or names (as set forth in the Fur Products Name Guide) of the animal or animals

that produced the fur. One of the labels did not disclose that the fur product contained dyed fur. One of the labels did not disclose the name or registration number required by subsection (E) of Section 4(2).

Certain of the products were misbranded in that they were not labeled in accordance with the Rules and Regulations promulgated under the Fur Products Labeling Act in the following respects:

(a) Information required under Section 4(2) of the Fur Products Labeling Act was abbreviated on labels in violation of Rule 4.

(b) Information required under Section 4(2) of the Fur Products Labeling Act was mingled with non-required information on labels in violation of Rule 29(a).

(c) Information required under Section 4(2) of the Fur Products Labeling Act was set forth in handwriting on labels in violation of Rule 29(b).

It is further ordered, That the first paragraph on page 10 of the initial decision, beginning with the words "The charges in the complaint" be modified to read as follows:

Certain fur products sold by respondent 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. Three of the invoices did not set out the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur contained in the garments. Six of the invoices failed to disclose that the garments described therein were composed of dyed fur. Three of the invoices failed to disclose that the garments described therein were composed in whole or in substantial part of bellies. Two of the invoices failed to disclose the country of origin of the invoiced garments.

Certain fur products sold by respondent were falsely and deceptively invoiced under Section 5(b)(2) of the Fur Products Labeling Act in that invoices issued in connection with the sale of such products contained the name of an animal other than the name of the animal that produced the fur contained in such garments.

Certain fur products sold by respondent were falsely and deceptively invoiced in that such garments had been used by ultimate consumers and the invoices issued in connection with the sale thereof did not designate such products "Second-hand" as required by Rule 23 of the Rules and Regulations promulgated under the Fur Products Labeling Act.

It is further ordered, That the last paragraph on page 17 of the initial decision, beginning with the words "At one time," be modified to read as follows:

At one time the Commission investigator, Mr. Anderson, questioned respondent's manager, Mr. Weiss, about current advertising of "thousands of furs to choose from." At that particular time, they checked the stock record book and it showed a stock of 1,263 fur garments, of which 515 were used garments. Since respondent did not have at least 2,000 fur products in stock at that time, his claim that a purchaser could choose from "thousands of furs" was a misrepresentation in violation of Section 5(a)(5) of the Fur Products Labeling Act.

It is further ordered, That the fourth paragraph on page 19 of the initial decision, beginning with the words "Respondent has not," be modified to read as follows:

The record fails to sustain the allegations of the complaint that respondent has violated the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder by removing, or causing or participating in the removal of, prior to the time certain fur products were sold and delivered to the ultimate consumer, labels required by the Fur Products Labeling Act to be affixed to such products; or that he has falsely invoiced certain fur products as charged in subparagraphs (a) and (c) of Paragraph Nine of the complaint; or falsely advertised free storage as alleged in paragraph 17 of the complaint or falsely advertised fur products through use of deceptive percentage savings claims as alleged in paragraph 18 of the complaint.

It is further ordered, That the following order be substituted for the order contained in the initial decision:

It is ordered, That respondent Samuel A. Mannis, an individual, doing business as Samuel A. Mannis and Company, or under any other trade name or names, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, offering for sale, transportation or distribution in commerce of any fur product, or in connection with the sale, advertising, offering for sale, transportation or distribution of any fur product which has been made in whole or in part of fur which has 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:

1. Misbranding fur products by:

A. Falsely or deceptively labeling or otherwise identifying any such product as having been manufactured or originally created or designed by or for respondent.

B. Failing to affix labels to fur products showing in words and figures plainly legible all information required to be disclosed by

each of the subsections of Section 4(2) of the Fur Products Labeling Act.

C. Using the term "blended" on labels to refer to or describe fur products which contain or are composed of bleached, dyed, or otherwise artificially colored fur.

D. Failing to set forth the term "Second-hand" on labels affixed to fur products that have been used or worn by an ultimate consumer.

E. Setting forth on labels affixed to fur products information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder which is abbreviated, handwritten or mingled with non-required information.

2. Falsely or deceptively involving fur products by:

A. Failing to furnish to purchasers of fur products invoices showing all information required to be disclosed by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

B. Setting forth on invoices the name or names of any animal or animals other than the name or names of the animal or animals that produced the fur contained in said fur product.

C. Failing to set forth the term "Second-hand" on invoices issued in connection with the sale of fur products that have been used or worn by an ultimate consumer.

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

A. Sets forth information required by Section 5(a)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form.

B. Fails to designate as "Second-hand" fur products that have been used or worn by an ultimate consumer.

C. Represents, directly or by implication, and contrary to the facts, that any such fur products:

(1) Are being offered for sale at or below respondent's wholesale cost.

(2) Must be sold by respondent without regard to cost or loss.

(3) Were manufactured or originally created or designed by or for respondent.

(4) Were secured by respondent from a source that is in financial or other distress.

D. Represents, contrary to the fact, that respondent has thousands of fur products for customers to choose from.

E. Represents, directly or by implication, that respondent is a manufacturer or wholesaler of fur products or that fur products can be purchased from respondent without a middleman's profit.

F. Represents, directly or by implication, that any fur product is guaranteed, unless the nature and extent of such guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously set forth.

G. Uses the term "written bonded appraisal," or terms of similar import or meaning, to represent the value of fur products being offered for sale unless such valuations are based upon authentic and bona fide appraisals of value by qualified appraisers having no pecuniary or other interest in such fur products.

H. Making pricing claims and representations of the type referred to in subparagraph (1) of paragraph C above unless there are maintained by respondent full and adequate records disclosing the facts upon which such claims and representations are based.

It is further ordered, That the allegations of the complaint that the respondent removed, or caused or participated in the removal of, prior to the time certain fur products were sold and delivered to the ultimate consumer, labels required by the Fur Products Labeling Act to be affixed to such products; or falsely invoiced certain fur products as charged in subparagraphs (a) and (c) of paragraph 9 of the complaint; or falsely advertised free storage, as alleged in paragraph 17 of the complaint; or falsely advertised fur products through use of deceptive percentage savings claims, as alleged in paragraph 18 of the complaint, be, and they hereby are, dismissed.

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

It is further ordered, That respondent, Samuel A. Mannis, shall, within sixty (60) days after service upon him of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist contained herein.

IN THE MATTER OF

MANNIE FEIGENBAUM, INC., ET AL.

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

Docket 7064. Complaint, Feb. 12, 1958—Decision, Feb. 9, 1960

Order requiring a corporation—which had purchased the stock of a bankrupt department store in Pasadena, Calif., brought in new merchandise, added a fur department operated on a concession basis, and participated with