

as modified hereby be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That respondents, Irving C. Katz Co., Inc., Irving C. Katz and Morris Katz, 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 contained herein.

IN THE MATTER OF
KOLOMER BROS., INC., ET AL.

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

Docket 7191. Complaint, July 17, 1958—Decision, July 31, 1959

Order requiring a New York City furrier to cease violating the Fur Products Labeling Act by setting forth fictitious prices on invoices and by failing to maintain adequate records as a basis for such pricing claims.

Mr. Charles W. O'Connell for the Commission.

Mr. Manfred H. Benedek, of New York, N.Y., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges that respondents have engaged in practices which are in violation of the Fur Products Labeling Act (hereinafter referred to as the Fur Act) and the Rules and Regulations promulgated thereunder (hereinafter referred to as the Rules), which practices constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act. Respondents, by answer, deny that they have violated either Act. Hearings have been held, at which evidence was presented in support of and in opposition to the allegations of the complaint, and counsel have filed proposed findings of fact and proposed conclusions. Upon the basis of the entire record, the following findings of fact are made, conclusions drawn and order issued.

1. Respondent Kolomer Bros., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and place of business located at 251 West 30th Street, New York, New York. Respondents William Kolomer and Jerome Kolomer (incorrectly referred to in the complaint as "*Jerone Kolomer*") are president and secretary-treasurer,

respectively, of said corporation. They formulate, direct and control the acts, policies and practices of said corporate respondent. Their address is the same as that of said corporate respondent.

2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have been, and are now, engaged in the introduction into commerce and in the manufacture for introduction into commerce, and in the sale, advertising, and offering for sale in commerce, and in the transportation and distribution in commerce, of fur products; and have manufactured for sale, sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act.

False Invoicing:

3. The first charge of the complaint is that respondents falsely and deceptively invoiced certain of their fur products by setting out on their invoices prices which were in fact fictitious, in violation of §5(b)(2) of the Fur Act. The Act defines "invoice" as follows:

SEC. 2. As used in this Act—

(f) The term "invoice" means a 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.

Fur products are frequently sent by manufacturers to retail establishments on consignment, in which cases memorandums of consignment are issued. Respondents use printed memorandum forms upon each of which, in large, conspicuous letters, is the statement "THIS IS NOT AN INVOICE." However, this does not change the character of the document, which clearly, under the Act, is an invoice.

4. Respondents' consignment memorandums to Arnold Constable, as a rule, showed two prices, an original and a present price, for each garment. The following are typical of the pricing practices followed by respondents on Constable consignment memorandums:

Garment	Date on Invoice	Prices	
		Original	Present
Mink Coat, Lot 551 -----	1/10/56	\$2,750 -----	\$1,995
Mink Coat, Lot 508 -----	12/24/56	\$2,600 -----	\$1,895
Mink Coat, Lot 508 -----	4/13/57	\$2,500 -----	\$1,550
Mink Coat, Lot 1200 -----	1/24/57	\$1,950 -----	\$1,650
Mink Coat, Lot 1217 -----	4/13/57	\$1,975 -----	\$1,550

113

Decision

The pricing history of these garments, other than as it relates to Constable, is shown in the following tabulation:

<i>Garment</i>	<i>Date</i>	<i>Consigned To</i>	<i>Price</i>
Mink Coat, Lot 551 -----	5/10/56	Friedner Furs -----	\$2,150
	6/ 2/56	Spencer Flournoy -----	\$2,250
Mink Coat, Lot 508 -----	1/ 8/57	Spencer Flournoy -----	\$1,850
	1/23/57	Richter & Franklin, Inc. ----	\$1,850
	3/18/57	J. H. Raphael -----	\$1,800
	3/22/57	Harry Graff -----	\$1,850
	3/28/57	Furs by Kent -----	\$1,800
Mink Coat, Lot 1220 -----	11/28/56	Mark Eckstein -----	\$1,750
	12/31/56	Spencer Flournoy -----	\$1,800
	12/31/56	William Rosenfeld -----	\$1,875
	3/ 7/57	John Bevalock -----	\$1,650
Mink Coat, Lot 1217 -----	11/30/56	David Eisner -----	\$1,750
	12/13/56	Chrystic Furs -----	\$1,700

Dual prices were given by respondents to no customers other than Constable, so far as this record shows.

5. The pattern of pricing indicates that respondents had no regular price for their garments, and the evidence requires a finding that they had no established original price. There are no records of respondents pertaining to price which show at what price any garment was originally offered, or what or when changes in price were subsequently made. The conclusion is that the prices shown by respondents as "original" were fictitious, and that respondents have falsely and deceptively invoiced certain of their fur products by setting out on invoices prices which were in fact fictitious, in violation of §5(b)(2) of the Fur Act.

6. The second charge is that respondents have falsely and deceptively advertised certain fur products by setting out on invoices prices which were in fact fictitious, in violation of Section 5(a)(5) of the Fur Act, and reliance to establish this charge is upon the facts hereinabove set forth and discussed. That respondents used fictitious prices on their consignment memorandums issued in connection with their fur-products transactions with Arnold Constable is clearly established. The fictitious prices set forth in these documents were in excess of the offering prices of the fur products to which they related and constituted false representations that such products were being offered for sale at a reduction from such fictitious prices. The documents themselves were used by respondents to aid and assist in the sale or offering for sale of the fur products listed therein, and the false representations made therein with respect to the prices of such products were necessarily intended for the same purpose. The fur products so described in the aforemen-

tioned consignment memorandums were falsely advertised within the meaning of Section 5(a)(5) of the Fur Act.

Inadequate Records

7. The third charge is that respondents have violated Rule 44(e) by not maintaining full and adequate records disclosing the facts upon which their pricing and savings claims and representations are based. As hereinabove found, respondents have falsely advertised certain fur products by representing that the prices thereof were reduced from what were, in fact, fictitious prices. Respondents have failed to maintain records disclosing the facts upon which such representations were based as required by subsection (e) of Rule 44 and, consequently, have violated that subsection.

CONCLUSIONS

1. Respondents are engaged in commerce and engaged in the above-found acts and practices in the course and conduct of their business in commerce, as "commerce" is defined in the Fur Products Labeling Act.

2. The acts and practices of respondents hereinabove found are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, and constitute unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

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

Upon the basis of the foregoing findings and conclusions, and all the facts of record,

It is ordered, That respondents, Kolomer Bros., Inc., a corporation, and its officers, and William Kolomer and Jerome Kolomer, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or the manufacture for introduction into commerce, or the sale, advertising, or offering for sale, transportation or distribution in commerce of fur products, or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation, or distribution of fur products which have been made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur" and "fur products" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Falsely or deceptively invoicing fur products by representing, directly or by implication, on invoices that the former, regular or

113

Final Order

usual price of any fur product is any amount which is in excess of the price at which respondents have formerly, usually or customarily sold such product in the recent regular course of their business.

B. 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 represents, directly or by implication, that the former, regular or usual price of any fur product is any amount which is in excess of the price at which respondents have formerly, usually or customarily sold such product in the recent regular course of their business.

C. Making pricing claims or representations of the type referred to in Paragraph B above, unless there are maintained by respondents full and adequate records disclosing the facts upon which such claims and representations are based.

OPINION OF THE COMMISSION

By SECREST, *Commissioner*:

This matter is before the Commission on the appeal of counsel supporting the complaint from the hearing examiner's dismissal of the allegations of the complaint that respondents had falsely advertised fur products in violation of the Fur Products Labeling Act and that they had failed to maintain records required by Rule 44(e) of the Rules and Regulations promulgated under the Act.

The issues presented herein were also before us in *Leviant Brothers, Inc.*, Docket No. 7194, and were decided in that case. Since we find no significant difference between the facts of the two cases insofar as these issues are concerned, our opinion in *Leviant* on these issues is equally applicable here. For the reasons stated in that opinion, we agree with counsel supporting the complaint that the hearing examiner erred in dismissing the aforementioned charges.

The appeal of counsel supporting the complaint is granted and the initial decision will be modified to conform with this opinion.

FINAL ORDER

Counsel in support of the complaint having filed an appeal from the initial decision of the hearing examiner, and the matter having been heard on briefs, no oral argument having been requested; and the Commission having rendered its decision granting the appeal and directing modification of the initial decision:

It is ordered, That paragraph 6 of the initial decision be modified to read as follows:

6. The second charge is that respondents have falsely and deceptively advertised certain fur products by setting out on invoices prices which were in fact fictitious, in violation of Section 5(a)(5) of the Fur Act, and reliance to establish this charge is upon the facts hereinabove set forth and discussed. That respondents used fictitious prices on their consignment memorandums issued in connection with their fur-products transactions with Arnold Constable is clearly established. The fictitious prices set forth in these documents were in excess of the offering prices of the fur products to which they related and constituted false representations that such products were being offered for sale at a reduction from such fictitious prices. The documents themselves were used by respondents to aid and assist in the sale or offering for sale of the fur products listed therein, and the false representations made therein with respect to the prices of such products were necessarily intended for the same purpose. The fur products so described in the aforementioned consignment memorandums were falsely advertised within the meaning of Section 5(a)(5) of the Fur Act.

It is further ordered, That paragraph 7 of the initial decision be modified to read as follows:

7. The third charge is that respondents have violated Rule 44(e) by not maintaining full and adequate records disclosing the facts upon which their pricing and savings claims and representations are based. As hereinabove found, respondents have falsely advertised certain fur products by representing that the prices thereof were reduced from what were, in fact, fictitious prices. Respondents have failed to maintain records disclosing the facts upon which such representations were based as required by subsection (e) of Rule 44 and, consequently, have violated that subsection.

It is further ordered, That the conclusions of law contained in the initial decision be modified to read as follows:

1. Respondents are engaged in commerce and engaged in the above-found acts and practices in the course and conduct of their business in commerce, as "commerce" is defined in the Fur Products Labeling Act.

2. The acts and practices of respondents hereinabove found are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, and constitute unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

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

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

It is ordered, That respondents, Kolomer Bros., Inc., a corporation, and its officers, and William Kolomer and Jerome Kolomer, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or the manufacture for introduction into commerce, or the sale, advertising, or offering for sale, transportation or distribution in commerce of fur products, or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation, or distribution of fur products which have been made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur" and "fur products" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Falsely or deceptively invoicing fur products by representing, directly or by implication, on invoices that the former, regular or usual price of any fur product is any amount which is in excess of the price at which respondents have formerly, usually or customarily sold such product in the recent regular course of their business.

B. 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 represents, directly or by implication, that the former, regular or usual price of any fur product is any amount which is in excess of the price at which respondents have formerly, usually or customarily sold such product in the recent regular course of their business.

C. Making pricing claims or representations of the type referred to in Paragraph B above, unless there are maintained by respondents full and adequate records disclosing the facts upon which such claims and representations are based.

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 Kolomer Bros., Inc., William Kolomer and Jerome Kolomer, 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 contained herein.