

IN THE MATTER OF
THE WARSON PRODUCTS CORPORATION ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT

Docket 6711. Complaint, Jan. 18, 1957—Decision, Aug. 22, 1957

Consent order requiring sellers in St. Louis, Mo., to cease disseminating advertising in newspapers and by radio and television broadcasts which represented falsely that their "Warsene Capsules" were an effective treatment for the pains and discomforts of arthritis, rheumatism, etc.; contained several active ingredients and were made like a doctor's prescription; and were a new and different treatment not theretofore available which would not cause stomach upset.

The individual respondents agreed to the same consent settlement on Jan. 22, 1958, *infra*, p. 949.

Mr. Harold A. Kennedy for the Commission.

Rogers, Hoge & Hills, by *Mr. Andrew J. Graham* and *Mr. William L. McGuire*, of New York, N.Y., and *Mr. Donald E. Fahey*, of St. Louis, Mo., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on January 18, 1957, charging Respondents with violation of the provisions of the Federal Trade Commission Act by the dissemination of false and misleading advertisements with respect to a drug preparation designated "Warsene Capsules," which Respondents sell and distribute in commerce.

On June 14, 1957, Respondent The Warson Products Corporation, by its president, Theodore E. Caruso; its counsel; and counsel supporting the complaint entered into an Agreement Containing Consent Order To Cease And Desist, which was approved by the Director and the Assistant Director of the Commission's Bureau of Litigation, and thereafter submitted to the Hearing Examiner for consideration.

Respondent The Warson Products Corporation is identified in the agreement as a Missouri corporation, with its office and principal place of business located at Room 1810, 314 North Broadway, St. Louis, Missouri, its location prior to September, 1956, having been 220 North Fourth Street, St. Louis, Missouri.

The agreement specifies that it does not dispose of this proceeding as to Respondents John J. Powers, George R. Williams and Donald E. Fahey individually, and that the order contained therein does

not prohibit the representations alleged in sub-paragraphs 5 and 6 of Paragraph Six of the complaint, regarding Respondents' product being a buffered formula and that it is the result of research, for the reason that counsel supporting the complaint is of the opinion, on the basis of the evidence now available, that such allegations cannot be sustained.

With those two exceptions, Respondent The Warson Products Corporation admits all the jurisdictional facts alleged in the complaint; agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations; and waives any further procedure before the Hearing Examiner and the Commission, the making of findings of fact or conclusions of law, and all the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

All parties signatory thereto agree that as to that part of this proceeding which is disposed of by this agreement, the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist as contained in the agreement shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; and that the agreement is for settlement purposes only and does not constitute an admission by Respondent The Warson Products Corporation that it has violated the law as alleged in the complaint.

After consideration of the allegations of the complaint and the provisions of the agreement and the proposed order, the Hearing Examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding with respect to Respondent The Warson Products Corporation. Accordingly, in consonance with the terms of the aforesaid agreement, the Hearing Examiner accepts the Agreement Containing Consent Order To Cease And Desist; finds that the Commission has jurisdiction over Respondent The Warson Products Corporation, and over its acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That Respondent The Warson Products Corporation, a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of the preparation "War-sene Capsules," or any preparation of substantially similar compo-

sition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from, directly or indirectly:

1. Disseminating or causing to be disseminated, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication, that said preparation:

a. Is an adequate, effective, or reliable treatment for the aches, pains, or discomforts of any kind of arthritis, rheumatism, neuralgia, neuritis, bursitis, sciatica, lumbago, muscle soreness, or allied disorders; will afford immediate, complete, or permanent relief from the aches, pains, or discomforts thereof, or have any therapeutic effect on the symptoms or manifestations of any such conditions or disorders in excess of affording temporary relief of minor aches or pains thereof;

b. Contains any analgesic ingredient other than salicylamide;

c. Is made like a doctor's prescription: *Provided, however*, This shall not prohibit the making of truthful representations concerning the use of such product by physicians;

d. Is a new, or substantially different, kind of preparation or substantially different in its mode of action or analgesic effect from other commonly-used analgesics;

e. Will not cause stomach upset;

2. Disseminating or causing to be disseminated any advertisements by any means, for the purpose of inducing, or which will likely induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of such preparation which contain any of the representations prohibited in Paragraph 1 of this order.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 22nd day of August, 1957, become the decision of the Commission; and, accordingly:

It is ordered, That respondent The Warson Products Corporation, a corporation, shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist.

Findings

IN THE MATTER OF
BEN COHEN TRADING AS BENTON FURSORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL
TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS*Docket 6501. Complaint, Feb. 9, 1956—Decision, Aug. 23, 1957*

Order requiring a furrier in Los Angeles, Calif., to cease violating the Fur Products Labeling Act by failing to comply with labeling and invoicing requirements, by setting forth on invoices the name of an animal other than that producing the fur in certain products, and by advertising which falsely represented prices of certain products as less than wholesale.

FINDINGS AS TO THE FACTS, CONCLUSIONS AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, the Federal Trade Commission on February 9, 1956, issued and subsequently served its complaint in this proceeding upon the respondent named above charging him with the use of unfair methods of competition and unfair and deceptive acts and practices in violation of the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act. After the filing of answer by the respondent, a hearing was held before a hearing examiner of the Commission and testimony and other evidence was received into the record including evidentiary matters stipulated by agreement between counsel. On September 6, 1956, the hearing examiner filed his initial decision in which he held that certain of the complaint's charges were sustained by the greater weight of the evidence and that others should be dismissed for reasons of lack of jurisdiction or other proof.

The Commission having considered the cross-appeals filed from the initial decision of the hearing examiner and the entire record in this proceeding and having determined that the appeal of counsel supporting the complaint should be granted and the appeal of the respondent denied and that the initial decision should be vacated and set aside, the Commission further finds that this proceeding is in the interest of the public and now makes this its findings as to the facts, conclusions drawn therefrom and order, the same to be in lieu of said initial decision.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent Ben Cohen is an individual trading as Benton Furs. He engages in the sale at retail of fur garments,

his office and place of business being located at 714 South Hill Street, Los Angeles, California.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, the respondent has advertised and offered for sale his fur products in commerce and he also has sold, advertised, offered for sale, transported and distributed 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 product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of the aforementioned fur products have been misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 4. Certain of the aforementioned fur products have been misbranded, in violation of the Fur Products Labeling Act, in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Required information was mingled with non-required information on labels, in violation of Rule 29(a) of the aforesaid Rules and Regulations;

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

(c) Respondent failed to set forth an item number or mark on labels assigned to fur products, in violation of Rule 40(a) of the aforesaid Rules and Regulations;

(d) Required information was set forth in abbreviated form on labels, in violation of Rule 4 of the aforesaid Rules and Regulations.

PAR. 5. Certain of said fur products have been falsely and deceptively invoiced, in that they were not invoiced by the respondent as required under the provisions of Section 5(b)(1) of the Fur Products Labeling Act, and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 6. Certain of said fur products were falsely and deceptively invoiced in that the respondent, on invoices furnished to purchasers of said fur products, set forth the name of an animal other than the name of the animal which produced the fur, in violation of Section 5(b)(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder.

PAR. 7. Certain of the aforementioned fur products were falsely and deceptively invoiced, in violation of the Fur Products Labeling

Conclusions

Act, in that they were not invoiced by the respondent in accordance with the Rules and Regulations promulgated thereunder in that required information was set forth in abbreviated form, in violation of Rule 4 of the aforesaid Rules and Regulations.

PAR. 8. Certain of the respondent's aforementioned fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act and of Rule 44(a) of the Rules and Regulations as heretofore promulgated thereunder. In such connection, the respondent has caused the dissemination in commerce, as "commerce" is defined in the Fur Products Labeling Act, of newspaper advertisements concerning his fur products which advertisements were not in accordance with the provisions of Section 5(a) of the Fur Products Labeling Act and of the Rules and Regulations promulgated thereunder and which advertisements were intended to and did aid, promote and assist, directly and indirectly, in the sale and offering for sale of said fur products.

Illustrative thereof were advertisements of the respondent which appeared in various issues of the Los Angeles Examiner, a publication having wide circulation in the State of California and substantial circulation in areas of other States of the United States which are adjacent thereto. Certain of such advertisements have included the following statement:

* * *

OUR PRICES ARE LOWER
than the wholesale houses
COME UP AND SAVE MONEY!

Thereby, the respondent has represented that the prices at which his fur products are offered for sale are less than wholesale prices which representation was false and deceptive. The respondent himself buys at wholesale prices and sells at a profit, and his prices necessarily are in excess of wholesale prices.

PAR. 9. The respondent in the regular course of his business has been in substantial competition with other individuals, corporations, and firms likewise engaged in the sale and distribution of fur products.

CONCLUSIONS

The aforesaid acts and practices of the respondent, as herein found, have been in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, and, as specified under the provisions of the aforesaid Act, additionally constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the meaning of the Federal Trade Commission Act.

Order

54 F.T.C.

Evidence also was submitted at the hearing relevant to the charges of alleged violation of Rule 44(f) of the Rules and Regulations prescribed by the Commission under the Fur Products Labeling Act incident to alleged use by the respondent of illustrations depicting more valuable fur products than those actually available at the respondent's advertised selling price. Those charges are not supported by the greater weight of the evidence, and provision for their dismissal accordingly is included in the order appearing hereafter.

ORDER

It is ordered. That respondent Ben Cohen, an individual doing business as Benton Furs or under any other name, 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 or offering for sale in commerce, or the 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 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:

A. Misbranding fur products by:

(1) Failure to affix labels to fur products showing:

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

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

(c) The name of the country of origin of any imported furs used in the fur products;

(d) 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.

(e) That the fur product consists of used or second-hand fur or furs, when such is the fact;

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

(2) Setting forth on labels attached to fur products:

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

