

Decision

IN THE MATTER OF
HOWARD NUSSBAUM, INC.,
TRADING AS BENTON FURS ET AL.

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

Docket 7382. Complaint, Feb. 2, 1959—Decision, May 20, 1959

Consent order requiring furriers in Los Angeles to cease violating the Fur Products Labeling Act by such practices as labeling certain fur products with the names of animals other than those which produced the fur, affixing tags bearing excessive fictitious prices represented thereby as usual retail prices, advertising which represented prices of fur products falsely as reduced, and failing in other respects to comply with the labeling, invoicing, and other requirements of the Act.

Mr. Eugene Kaplan for the Commission.

Harry Cohen, Esq., for *Jerome Weber*, of Los Angeles, Calif.,
for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on February 2, 1959, issued its complaint herein, charging the above-named respondents with having violated the provisions of both the Federal Trade Commission Act and the Fur Products Labeling Act, together with the Rules and Regulations promulgated thereunder, and the respondents were duly served with process.

On March 27, 1959, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement Containing Consent Order to Cease and Desist," which had been entered into by and between respondents and the attorneys for both parties, under date of March 25, 1959, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

On due consideration of such agreement, the hearing examiner finds that said agreement, both in form and in content, is in accord with §3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and that by said agreement the parties have specifically agreed to the following matters:

1. Respondent Howard Nussbaum, Inc., is a corporation existing and doing business under and by virtue of the laws of the

Decision

55 F.T.C.

State of California, with its office and principal place of business located at 714 South Hill Street, Los Angeles 14, Calif.

Respondent Howard Nussbaum is president of said corporate respondent and formulates, directs, and controls the acts, policies, and practices of said corporate respondent. His address and principal place of business is the same as that of said corporate respondent.

2. Respondents admit all the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

3. This agreement disposes of all of this proceeding as to all parties.

4. Respondents waive:

a. Any further procedural steps before the hearing examiner and the Commission;

b. The making of findings of fact or conclusions of law; and

c. All of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

5. The record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement.

6. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

7. This agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

8. The following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondents. When so entered it shall have the same force and effect as if entered after a full hearing. It may be altered, modified, or set aside in the manner provided for other orders. The complaint may be used in construing the terms of the order.

Upon due consideration of the complaint filed herein and the said "Agreement Containing Consent Order to Cease and Desist," the latter is hereby approved, accepted and ordered filed, the same not to become a part of the record herein, however, unless and until it becomes part of the decision of the Commission. The hearing examiner finds from the complaint and the said "Agreement Containing Consent Order to Cease and Desist" that the

1835

Order

Commission has jurisdiction of the subject matter of this proceeding and of each of the respondents herein; that the complaint states a legal cause for complaint under the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations promulgated by the Commission under the latter Act, against each of the respondents, both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said agreement is appropriate for the just disposition of all of the issues in this proceeding as to all of the parties hereto; and that said order therefore should be, and hereby is, entered as follows:

ORDER

It is ordered, That Howard Nussbaum, Inc., a corporation, trading as Benton Furs, or under any other name, and its officers, and Howard Nussbaum, individually and as an officer of said corporation, and respondents' 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 fur products, or in connection with the sale, advertising, offering for sale, transportation, or distribution of fur products which are 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. 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 product 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) That the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact;

(5) The name, or other identification issued and registered by the Commission, of one or more persons who manufactured such

Order

55 F.T.C.

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;

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

B. Falsely or deceptively labeling or otherwise identifying any such product as to the name or names of the animal or animals that produced the fur from which such product was manufactured.

C. Falsely or deceptively labeling or otherwise identifying such products as to the regular prices thereof by any representation that the regular or usual prices of such products are any amount in excess of the prices at which respondents have usually and customarily sold such products in the recent regular course of business.

D. Setting forth on labels affixed to fur products:

(1) Information required under §4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form;

(2) Information required under §4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, mingled with non-required information;

(3) Information required under §4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in handwriting.

E. Failing to set forth the information required under §4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder on one side of labels.

F. Failing to set forth the information required under §4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in the required sequence.

2. Falsely or deceptively invoicing fur products by:

A. Failing to furnish invoices to purchasers of 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) That the fur product is composed in whole or in substan-

1835

Decision

tial part of paws, tails, bellies, or waste fur, when such is the fact;

(5) The name and address of the person issuing such invoice;

(6) The name of the country of origin of any imported furs contained in a fur product;

(7) The item number or mark assigned to a fur product.

B. Setting forth information required under §5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form.

3. Making price claims and representations respecting price reductions unless there are maintained by respondents full and adequate records disclosing the facts upon which such claims or representations are based.

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 20th day of May 1959, become the decision of the Commission; and, accordingly:

It is ordered, That the above-named respondents 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.

IN THE MATTER OF
KEELE HAIR & SCALP SPECIALISTS, INC., ET AL.

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

Docket 6589. Complaint, July 17, 1956—Decision, May 21, 1959

Order requiring two distributors of hair and scalp preparations in Oklahoma City, Okla., and Wichita, Kans., respectively, along with their advertising agency, to cease advertising falsely that their said preparations would be effective in checking thinning hair and overcoming baldness, including male pattern baldness; to reveal clearly that the great majority of cases of thinning hair and baldness are of the male pattern type and that their preparation would be ineffective in such cases; and to cease claiming that they and their agents were "Trichologists" or had training in dermatology or other branches of medicine.

Mr. Harold A. Kennedy for the Commission.

Mr. Richard M. Welling, of Charlotte, N.C., for respondents Keele Hair & Scalp Specialists, Inc., William L. Keele, Thelma P. Keele, J. H. Keele, Rogers Hair Experts, Inc., and American Advertising Bureau, Inc.

No appearance for respondents Lorene Firsching, Vangie Clendenin, J. Wayne Green, John Shiflet, Mrs. Lorraine Shiflet and David A. Miller.

John H. Kennedy, *pro se*.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

1. The Commission's complaint in this matter charges the respondents with disseminating false advertisements in connection with various cosmetic and drug preparations intended for use in the treatment of the hair and scalp. After the filing by certain of the respondents of their answers to the complaint, hearings were held at which evidence both in support of and in opposition to the complaint was received. Proposed findings and conclusions have been submitted by counsel supporting the complaint, and a motion to dismiss the complaint has been filed by counsel for respondents Keele Hair & Scalp Specialists, Inc., Rogers Hair Experts, Inc., American Advertising Bureau, Inc., William L. Keele, Thelma P. Keele and J. H. Keele. The case has been argued orally and is now before the hearing examiner for final consideration. Any proposed findings and conclusions not included herein have been rejected.

2. Respondent Keele Hair & Scalp Specialists, Inc., is a corporation organized and existing under the laws of the State of Oklahoma, with its office and principal place of business located at 710 Leonhardt Building, Oklahoma City, Okla. Respondents William L. Keele, Thelma P. Keele, and J. H. Keele are officers of the corporation, their addresses being as follows: William L. Keele, 710 Leonhardt Building, Oklahoma City, Okla.; Thelma P. Keele, 905 NW. 40th Street, Oklahoma City, Okla.; and J. H. Keele, Red Rock, Okla. These individuals control the policies, acts and practices of the corporation, including those hereinafter described.

3. Respondent Rogers Hair Experts, Inc., is a corporation organized and existing under the laws of the State of Kansas, with its office and principal place of business at 426 East Central Avenue, Wichita, Kans. Respondents Lorene Firsching and Vangie Clendenin are officers of the corporation, their addresses being as follows: Lorene Firsching, Range Road, Wichita, Kans.; Vangie Clendenin, Michigan, Kans. These individuals control the policies, acts and practices of the corporation, including those hereinafter described.

4. Respondent J. Wayne Green, joined as a respondent individually and as an officer of Rogers Hair Experts, Inc., was not served with process, and the complaint must therefore be dismissed as to him. The term respondents as used hereinafter will not include this individual.

5. Respondent American Advertising Bureau, Inc., is a corporation organized and existing under the laws of the State of Oklahoma, with its office and principal place of business located at 704 Leonhardt Building, Oklahoma City, Okla. Respondents John Shiflet, Mrs. Lorraine Shiflet and David A. Miller are officers of the corporation, their address being the same as that of the corporation. These individuals control the policies, acts and practices of the corporation, including those hereinafter described.

6. Respondent John H. Kennedy, joined as a respondent individually and as an officer of American Advertising Bureau, Inc., is a practicing attorney in Oklahoma City, Okla. While for a period of approximately three months (September 1 to December 3, 1954) he was vice president of the corporation, he has at no time participated actively in the management of its affairs. Since December 3, 1954, he has had no connection whatever with the company. The complaint is therefore being dismissed

