

1611

Complaint

sion a report in writing setting forth in detail the manner and form in which they have complied with this order.

## IN THE MATTER OF

B. WOLLMAN &amp; BROS., INC., ET AL.

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

*Docket 8540. Complaint, Oct. 24, 1962—Decision, Dec. 5, 1963*

Order requiring manufacturing furriers in New York City to cease violating the Fur Products Labeling Act by labeling and invoicing artificially colored furs as natural, and failing to disclose on labels and invoices and in advertising that certain furs were bleached or dyed; failing to disclose in advertising the names of animals producing furs and the country of origin of imported furs, and to describe as natural fur products which were not artificially colored; advertising fur products as reduced from "regular" former prices which were in fact fictitious; failing to keep adequate records as a basis for price and value claims; and failing to comply in other respects with labeling, invoicing and advertising requirements.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that B. Wollman & Bros., Inc., a corporation, Barney Wollman, Sheldon Wollman, Herman Wallman, and Harry Wallman, individually, and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent B. Wollman & 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 principal place of business located at 352 Seventh Avenue, New York, New York.

Individual respondents, Barney Wollman, Sheldon Wollman, Herman Wallman, and Harry Wallman, are president, vice-president, treasurer and vice-president-secretary, respectively, of corporate respondent. The individual respondents formulate, direct and control the acts, practices and policies of corporate respondent including those

hereinafter set forth. The office and principal place of business of the individual respondents is the same as that of the corporate respondent.

Respondents are manufacturers of fur products.

PAR. 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 the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were misbranded or otherwise falsely or deceptively labeled in that said fur products were labeled to show that the fur contained therein was natural, when in fact, such fur was bleached, dyed or otherwise artificially colored, in violation of Section 4(1) of the Fur Products Labeling Act.

PAR. 4. Certain of said fur products were 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.

Among such misbranded fur products, but not limited thereto, were fur products with labels which failed to disclose that the fur contained in the fur products was bleached, dyed, or otherwise artificially colored, when such was the fact.

PAR. 5. Certain of said fur products were 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) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in abbreviated form, in violation of Rule 4 of said Rules and Regulations.

(b) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth in the required sequence, in violation of Rule 30 of said Rules and Regulations.

PAR. 6. Certain of said fur products were falsely and deceptively invoiced in that said fur products were invoiced to show that the fur contained therein was natural, when in fact such fur was bleached,

1617

## Complaint

dyed, or otherwise artificially colored, in violation of Section 5(b) (2) of the Fur Products Labeling Act.

PAR. 7. Certain of said fur products were falsely and deceptively invoiced in that they were not invoiced as required by Section 5(b) (1) of the Fur Products Labeling Act and the Rules and Regulations promulgated under such Act.

Among such falsely and deceptively invoiced fur products, but not limited thereto, were invoices pertaining to such fur products which failed to disclose that the fur contained in the fur products was bleached, dyed, or otherwise artificially colored when such was the fact.

PAR. 8. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in that the information required under Section 5(b) (1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in abbreviated form, in violation of Rule 4 of said Rules and Regulations.

PAR. 9. Certain of said fur products were falsely or deceptively advertised in that said fur products were not advertised as required under the provisions of Section 5(a) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

Said advertisements were intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of said fur products.

Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondents in the form of price lists and other documents and memoranda which were distributed by respondents in New York to its customers in California and other states outside of the State of New York.

Among such false and deceptive advertisements of fur products, but not limited thereto, were advertisements which failed:

(a) To disclose the name or names of the animal or animals that produced the fur contained in the fur product as set forth in the Fur Products Name Guide, in violation of Section 5(a)(1) of the Fur Products Labeling Act.

(b) To disclose that fur products contained or were composed of bleached, dyed or otherwise artificially colored fur, when such was the fact, in violation of Section 5(a) (3) of the Fur Products Labeling Act.

(c) To disclose the name of the country of origin of the imported fur contained in fur products, in violation of Section 5 (a) (6) of the Fur Products Labeling Act.

PAR. 10. Respondents by means of the advertisements referred to in Paragraph Nine, and other advertisements of similar import and meaning not specifically referred to herein, falsely and deceptively advertised their fur products in the following respects:

(a) Information required under Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in abbreviated form, in violation of Rule 4 of said Rules and Regulations.

(b) Fur products which were not pointed, bleached, dyed, tip-dyed or otherwise artificially colored were not described as natural as required by Rule 19 of said Rules and Regulations.

PAR. 11. By means of the advertisements referred to in Paragraphs Nine and Ten, and other advertisements of similar import and meaning not specifically referred to herein, respondents falsely and deceptively advertised their fur products in that respondents represented fur products as having been reduced from regular or usual former prices where the so-called regular or usual former prices were in fact fictitious in that they were not the prices at which said merchandise was usually sold by respondents in the recent regular course of business, in violation of Section 5(a)(5) of the Fur Products Labeling Act.

PAR. 12. Respondents, in advertising fur products for sale as aforesaid, made claims and representations respecting prices and values of fur products. Said representations were of the types covered by subsections (a), (b), (c) and (d) of Rule 44 of the Rules and Regulations promulgated under the Fur Products Labeling Act. Respondents, in making such claims and representations, failed to maintain full and adequate records disclosing the facts upon which such claims and representations were based, in violation of Rule 44(e) of said Rules and Regulations.

PAR. 13. The aforesaid acts and practices of respondents, as herein alleged, 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.

*Mr. Edward B. Finch*, counsel supporting the complaint.

*Mr. Lester A. Lazarus*, New York, N.Y., counsel for the respondents.

1617

Initial Decision

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

OCTOBER 9, 1963

The complaint issued in this proceeding on October 24, 1962, charges that B. Wollman & Bros., Inc., Barney Wollman, Sheldon Wollman, Herman Wallman, and Harry Wallman, individually and as officers of said corporation, hereinafter called respondents, misbranded, falsely advertised and invoiced certain fur products in violation of the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act.

The respondents filed a joint answer to the complaint in which they admitted the jurisdictional allegations and also admitted that the individual respondents formulate and direct the acts, practices and policies of the corporate respondent, but denied the violations alleged.

Hearings have been held for the receipt of evidence in support of and in opposition to the allegations of the complaint. The matter is now before the hearing examiner for initial decision. Counsel for the parties have filed proposed findings of fact, conclusions of law, and order. These have been considered, together with the testimony and documentary evidence. All proposed findings and conclusions not found or concluded herein are denied. Upon the basis of the entire record, the hearing examiner makes the following findings of fact and conclusions of law, and issues the following order:

## FINDINGS OF FACT

1. The respondent B. Wollman & Bros., Inc., is a corporation organized and doing business under the laws of the State of New York with its office and place of business located at 352 Seventh Avenue, New York, New York.

2. The individual respondents, Barney Wollman, Sheldon Wollman, Herman Wallman, and Harry Wallman, are President, Vice-President, Treasurer and Vice-President-Secretary, respectively, of the corporate respondent. The individual respondents formulate, direct and control the acts, practices and policies of the corporate respondent, including those hereinafter found. The office and place of business of the individual respondents is the same as that of the corporate respondent.

3. Prior to and subsequent to the effective date of the Fur Products Labeling Act, August 9, 1952, the respondents have been and are now engaged in the manufacture, advertising, transportation, offering for sale, and sale, in commerce, of fur products which have been made in whole or in part of fur which had been shipped and received

Initial Decision

63 F.T.C.

in commerce as the terms "commerce", "fur", and "fur product" are defined in the Fur Products Labeling Act.

4. The complaint alleges that the respondents violated a number of the specific provisions of the Fur Products Labeling Act and the Federal Trade Commission Act, but the establishment of these alleged violations depend upon whether (1) some of respondents' fur products were dyed, and; (2) whether respondents falsely advertised and invoiced certain of their fur products. Respondents denied that any of their fur products were dyed or falsely advertised and invoiced. Most of the evidence and testimony received at the hearing related to these two questions. The principal testimony bearing on the question of the dyeing of fur products will now be discussed.

5. Mr. George J. Curry, Jr., an investigator with the Bureau of Textiles and Furs in the New York Office of the Federal Trade Commission, testified that he received instructions from his superiors to investigate the firm of B. Wollman & Bros., Inc., generally, under the Fur Products Labeling Act, and particularly, as to whether the firm had been dyeing furs or otherwise mislabeling fur products. (Tr. 14-84, 203-204) Accordingly, on June 9, 13, 14, and 15, 1961, Mr. Curry went to the premises of B. Wollman & Bros., where he examined the records of the corporate respondent as to the purchase and sale of fur products, inspected the labels attached to certain fur garments, and, with tweezers, removed approximately 200 hairs from each of fifteen mink garments in the corporate respondent's stock, for testing purposes. He removed the hairs from the grotzens<sup>1</sup> and entire body of each garment, including the sleeves, front and back. Upon removing the approximately 200 hairs from each garment, he placed the hairs from each garment in a new, unused envelope which he had obtained from the stock of standard franked envelopes on hand in the New York Office of the Federal Trade Commission, sealed the envelope and marked it for identification. During all of the time that Mr. Curry was removing hairs from the fifteen mink garments, one of the individual respondents was with him. In fact, the respondent Barney Wollman, President of the corporate respondent, assisted Mr. Curry in removing hairs from some of the garments and placed them in the envelopes provided by Mr. Curry. At the request of the individual respondents, Mr. Curry did not remove any of the labels from the garments from which he removed the hairs, but copied and reproduced on the outside of each envelope the information contained on the label which was attached to each fur garment from which Mr. Curry and Mr. Barney Wollman removed the hairs. Some of the

<sup>1</sup> The grotzen is along the center or darker portion of a mink skin.

1617

## Initial Decision

envelopes containing the hairs were marked for identification and received at the hearing as CX 1, 1A, 2, 2A, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 13A.<sup>2</sup> Mr. Curry also went to the premises of Hebel & Schultz, retail fur dealers in Philadelphia, Pennsylvania, and removed approximately 200 hairs from a mink garment which that company had purchased from the corporate respondent B. Wollman & Bros. This garment is described on Wollman Invoice No. 12670, dated July 18, 1961, Item No. 2956-611A, Cerulean Mink Jacket, a copy of which invoice was received in evidence as CX 19A. Mr. Curry placed the hairs which he removed from this garment in an envelope which was received in evidence at the hearing as CX 19. The envelopes containing these hairs were then transmitted to the Federal Trade Commission in Washington, D. C., Bureau of Textiles and Furs, for testing for the presence of dyes or dyestuffs. The results of these tests will be discussed in subsequent paragraphs.

6. On a subsequent visit to the premises of the corporate respondent, Mr. Curry visited the workroom or factory area where fur garments are manufactured and observed two bottles of dyestuff. Mr. Curry requested a B. Wollman & Bros., employee to permit him (Curry) to examine the bottles, but the employee refused. On a still later visit to the premises with Dr. Leon S. Moos, a graduate chemist and consultant with the Federal Trade Commission in the Bureau of Textiles and Furs, the individual respondent Sheldon Wollman permitted Mr. Curry to take possession of the two bottles. These bottles bore the label "Kander Dark Brown Dye". These bottles were marked for identification and received in evidence at the hearing as CX 92. (Tr. 48) From all of the evidence, the hearing examiner finds that these bottles contained dyes or dyestuffs. On this same visit to the premises of B. Wollman & Bros., while accompanied by Dr. Moos, Mr. Curry also observed several boxes of powder dye, one box being in the possession of an employee of the corporate respondent whose name Mr. Curry did not know. Present at the time, in addition to Mr. Curry and the employee who was holding the box of powder in his hand, were Dr. Moos and the individual respondent Sheldon Wollman.

7. Dr. Leon S. Moos, a graduate chemist and consultant with the Federal Trade Commission, Bureau of Textiles and Furs, corroborated some of the testimony previously given by Mr. Curry. Dr.

<sup>2</sup> CX 2A and 13A are envelopes in which Mr. Curry placed second samples of hairs which he removed a second time from two fur garments for the purpose of making a second test of hairs from these two garments (Items Nos. 2461 and 2065, respectively). In other words, on a previous visit, Mr. Curry had removed samples of hairs from these garments for testing purposes, and had placed the hair samples in envelopes marked CX 2 and CX 13, respectively.

Moos testified that: In July 1962, he visited the place of business of the corporate respondent, and talked with Mr. Sheldon Wollman and his father, Barney Wollman. Mr. Curry, the Commission investigator, was also present. Messrs. Wollman had previously been advised that the Commission's tests of the hairs previously removed from some of the corporate respondent's fur garments showed evidence of dyeing, and Messrs. Wollman stated to Dr. Moos that this could not be so because they did not use any dyes. Dr. Moos then went into the workroom or factory where he observed an employee apply powder to a new mink garment. With an iron, the employee then ironed the powder into the fur. Dr. Moos testified that the powder "changed the color of the fur right in front of my eyes".

8. Miss Idelle Myra Shapiro (Tr. 102-108), a textile technologist employed by the Federal Trade Commission, Washington, D. C., in its Bureau of Textiles and Furs, testified that she tested the hairs contained in the envelopes marked CX 1, 1A, 2, 2A, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 13A, and 19, to find out whether the fur hairs were natural or dyed and found that the hairs contained in each envelope had been dyed. Respondents challenged the qualifications of Miss Shapiro and the validity of the tests of the mink hairs performed by her and about which she testified.

9. Miss Shapiro graduated from the University of Maryland in 1959 with a B.S. Degree, majoring in textiles. She began her employment with the Commission during her senior year in college. At the Commission, she was taught the technique of testing fur fibers or hairs for the presence of dyes by Marjorie Malloy, the Federal Trade Commission chemist in charge at that time. Miss Shapiro has also received instruction from Dr. Moos since his employment with the Commission in 1961. In her original tests of the fur hairs contained in the envelopes, Miss Shapiro used what is known as the 4 Pyridylpyridinium Dichloride test. Miss Shapiro followed the standard procedures outlined in the well-known publication by Fritz Frigl, "Spot Test and Organic Analysis". In making the tests, Miss Shapiro had before her, in writing, a step-by-step standard procedure which she followed in making the so-called 4 Pyridylpyridinium Dichloride test. She did not rely on her memory.

10. Briefly, in making the 4 Pyridylpyridinium Dichloride test of the hairs contained in each of the envelopes, Miss Shapiro did the following: She had three clean, white, cup-shaped crucibles. With clean tweezers, she removed the hairs from each envelope, such as CX 1, and placed the hairs in one of the crucibles. She then placed an approximately equal number of hairs from a known natural mink skin in the second crucible, and an approximately equal number of



1617

Initial Decision

hairs from a known dyed mink skin in the third crucible. A solution of 24% pyridine, an organic solvent, was then added to each crucible, and the hairs were allowed to remain in this solution for approximately 30 minutes. Each crucible was then placed over a flame and allowed to remain until the chemical began to fume. The crucibles were then removed from the flame and the contents were allowed to cool for about five minutes. Any dye present on the hair would be stripped from the hair and dissolved by the pyridine solution. The pyridine solution does not affect any natural pigments in the hair. The crucibles containing the known natural mink hairs and known dyed mink hairs serve as positive controls in the test. Samples of the solution from each crucible were then placed in three separate clean test tubes, to which was added a drop of a one-percent solution of 4 Pyridylpyridinium Dichloride, two drops of sodium hydroxide, and three drops of hydrochloric acid. The contents were then shaken. The presence of dye in the solution is indicated by a pink to a deep red color and is determined by a visual observation of the color of the liquid solution, and comparing it with the color of the liquid removed from the crucibles containing the known natural hairs and the known dyed hairs. After each first test, a confirmatory standard chemical analytical test, called a phosphomolybdic test, was run on each hair sample. In making this confirmatory test of each hair sample, Miss Shapiro also had before her a written step-by-step procedure for this test. In fact, for each type of test which Miss Shapiro performs in the laboratory, she has before her a written step-by-step procedure for each test. After completing each test, she records the type of test and the results in the records in her laboratory, identifying the sample tested and the date of the test.

11. Miss Shapiro did a second 4 Pyridylpyridinium Dichloride test on some of the hairs and also what is called a Colorimeter test. Miss Shapiro described the Colorimeter as a device or machine which measures the amount of light passing through a liquid solution. The Colorimeter has a transparent container, called a cuvette, into which the solution is placed. When a natural solution is placed in the cuvette, 100% of the light set at a certain wave length will pass through this solution, and a meter on the device registers 100% transmission of the light through the cuvette. In testing some of the hairs here involved on the Colorimeter, Miss Shapiro took samples of the solution from each of the crucibles and successively placed sample amounts in the cuvette and by comparing the density and color of the solution, she determined the presence of dye in the solution containing the hairs from the corporate respondent's mink garments.

The Commission obtained the Colorimeter in 1961 for use in its laboratory.

12. There are other recognized tests for the testing of fur hairs for the presence of dye, in addition to the two tests which Miss Shapiro testified that she performed on the hairs in question. Among these is a test which is called the Brandowski Base test. Miss Shapiro did not perform the Brandowski Base test on the fur hairs contained in the envelopes which were received in evidence as CX 1, 1A, 2, 2A, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 13A, and 19. However, she did perform the Brandowski test on fur hairs contained in one of the envelopes which Mr. Curry had removed from one of corporate respondent's fur garments. Miss Shapiro had performed two tests of this sample of hairs, and each test proved negative. That is, neither test indicated the presence of dyestuffs. So, Miss Shapiro then performed a third test on the same fur hairs. This third test was the Brandowski Base test. The results from the Brandowski test were also negative. This was the only negative finding from all of the tests made by Miss Shapiro of the samples of hairs removed from fifteen fur garments manufactured by the corporate respondent. Counsel supporting the complaint did not offer in evidence the envelope which had contained this particular sample of hairs, evidently because the three tests run on this sample were negative. A copy of the results of the tests made by Miss Shapiro are in evidence as RX 1 and 2. In her testing of the hairs in question, Miss Shapiro was not concerned with determining the kind, type, or amount of dye, if any, present on the hairs. The purpose of her tests was to determine the presence of dye or dyestuffs, which are not present on natural mink hairs.

13. Some of the testimony offered by respondents in denial of the charge of dyeing will now be discussed. Mr. George Schleifer, foreman, manager, and cutter, in charge of the manufacturing operations of the corporate respondent, like Mr. Sheldon Wollman, denied that any form of dye was ever used on a mink garment manufactured by corporate respondent. Mr. Schleifer testified that the dye contained in CX 92 is used on muskrat, sable, fitch and Bolinsky, but is not feasible to use on mink. Mr. Schleifer also testified that corporate respondent had not purchased more than two jars of powder dye, sometimes called touche powder, in the past ten years and that any powder so purchased was only used to touch-up old, remodeled fur garments. He also testified that the ironer at B. Wollman & Bros., is not permitted to use this powder. Mr. Schleifer also denied ever having had any conversation with Dr. Moos about the use of dye in the B. Wollman & Bros., factory. (Tr. 218-231.)

14. Mr. Sheldon Wollman, Vice-President and general manager of the corporate respondent, testified as follows: Each fur garment manufactured by corporate respondent bears an identifying symbol called an item number. The item number is written on a paper "hang tag" attached to the outside of the garment by a metal snap. Wollman also marks the item number in indelible ink on the underside or leather side of the fur garment. The two numbers are identical. Mr. Wollman testified that the average age of the fur garments involved in this proceeding (which the Commission claims were dyed) was approximately four years of age. In other words, most of the fur garments were manufactured in 1957. During the intervening years, the garments had been sent out on a consignment basis to retail stores all over the United States. Mr. Wollman testified to his cost price for each mink skin which went into the manufacture of each garment and the average cost of labor involved in the manufacture of each garment. Mr. Wollman also testified, that insofar as he knew, he had never purchased a blended mink skin, and he denied having had the conversation with Dr. Moos, as testified to by Dr. Moos. Mr. Wollman denied that he had ever instructed any employee to dye a mink skin or mink fur product. (Tr. 231-243)

15. Mr. Carl F. Ackerbauer, a consultant chemist, operating the Ackerbauer Laboratories in Johnstown, New York, and since 1961, associated with Federal Testing Corporation, New York, New York, testified, among other things, that: He is a graduate chemist, and in his work does some testing for the New York State Police Laboratories. Based on his experience, he will not accept for testing any material sent to him in an envelope due to the possibility of contamination from the paper. He will only accept material which is contained in glass jars. Paper is a derivative of cellulose which has been treated with caustic soda and sodium bisulphite. Therefore, according to Mr. Ackerbauer, there is a possibility that the mink hairs which were placed in white paper envelopes by Mr. Curry may have become contaminated by the presence of sodium bisulphite and the inherent moisture of the paper. On cross-examination, Mr. Ackerbauer testified that: He did not perform any tests of hairs removed from any of the fur products involved in this proceeding; he considers the Brandowski test the most reliable, but admitted that the Brandowski test would not detect the presence of dyestuff placed on mink hairs in powder form, and would only detect one particular type of dyestuff, ursole dyes. In his opinion, none of the tests of the hairs involved in this proceeding, including those performed by Miss Shapiro, would show the presence of powder dye. On recross-examination, Mr. Ackerbauer testified that, there are some circumstances where pyridine, used in stripping

dyestuff from a mink hair, in the presence of small amounts of adulterants, can become a new chemical called alpha-alphaprimepyridine. Mr. Ackerbauer testified that he does not know, but he has a *feeling* that this alpha-alphaprimepyridine is a contaminant for the two tests used by Miss Shapiro, the 4 Pyridylpyridinium Dichloride and the Phosphomolybdic test. (*Italic supplied.*) Mr. Ackerbauer further testified that the tests performed by Miss Shapiro were invalid because: "both tests indicate the presence of primary amines and do not indicate the presence of an oxidized amine, which is an amide; at no time was it brought out that the material obtained from the pyridine solution had been reduced from the amide to the amine, giving you the positive test". Mr. Ackerbauer explained the above statement by saying that the tests performed by Miss Shapiro were for the purpose of determining the presence of amines, which is the actual dyestuff, not the dye, and her tests are not indicative of an oxidized amine. They are indicative of an amide. To his knowledge, he went on to say, "if the dyestuff has been applied to the fur it is converted over to the amide. There are no free amines present". (Tr. 243-263.)

16. Mr. Ernest Vandeweghe, principal officer of the Federal Testing Corporation, New York, New York, was the next witness for the respondents. Mr. Vandeweghe is a graduate of Colgate University, with a B.S. Degree, obtained in 1926. Since that time, Mr. Vandeweghe has been in the fur dressing and dyeing business. In 1961, he formed the Federal Testing Corporation. He testified, among other things, that: He has been testing fur fibers for the presence of dyes for approximately fourteen years. He will not accept for testing any fur hair samples sent to him. He prefers to take the entire fur garment to his place of business and there remove the individual hairs for testing. He first makes some preliminary tests to determine the type of dyes he is going to test for. By rubbing a clean white cloth against the fur fibers, the presence of a powdered dye pigment will show on the cloth by a dark discoloration. Next, he might moisten the white cloth with warm water and rub it against the fur fibers to see if this would lift off any of the dye pigment, and then he might use some clorox to strip the color. Ursol dyes are the most common type used in the fur industry for the coloration of fur products. Mr. Vandeweghe did not consider the tests performed by Miss Shapiro determinative of the presence of dye on the hairs. There are substances other than dyes which could have been present on the hairs which, in the tests performed by Miss Shapiro, would have given the identical results. Also, in a visual test, there is room for disagreement between viewers and, for this reason, such a test is not entirely accurate.

1617

## Initial Decision

17. Mr. Vandeweghe further testified that, after B. Wollman & Bros., had been notified of the results of the tests made by the Federal Trade Commission, Wollman employed Federal Testing Corporation to make tests of some of the same fur products for the presence of dyes. Mr. Vandeweghe testified that his laboratory was employed by B. Wollman & Bros., partly upon the recommendation of Dr. Moos, the Commission fur consultant. Mr. Vandeweghe further testified: He removed and tested samples of hairs from four of the same fur products manufactured by corporate respondent which had been previously tested by the Commission employee, Miss Shapiro, and did not find any dyestuff present on any of the hairs. Mr. Vandeweghe identified the hairs which he removed from each garment by item number; that, in addition to the mechanical abrasion tests on the garment itself, which he described as preliminary, he also performed the Brandowski Base test, the 4 Pyridylpyridinium Dichloride test, and the Phosphomalybdic Acid test on the hairs which he removed from each garment. Each of his tests proved negative. His four written negative test reports were received in evidence as RX 5A-D. Mr. Vandeweghe criticized the manner in which Miss Shapiro performed the 4 Pyridylpyridinium Dichloride test, especially the manner in which she stripped the dyes, as distinguished from dyestuffs, from the hairs. Basically, their procedure was the same, except Mr. Vandeweghe used water instead of pyridine solution, and he left the hairs in the solution while making his visual test, whereas Miss Shapiro removed the hairs from the solution before her final visual testing. In the opinion of this hearing examiner, the test procedure followed by the Commission technician, Miss Shapiro, is preferable to that which Mr. Vandeweghe testified that he followed. It is found that Mr. Vandeweghe's criticism of the Commission's testing procedure is not valid.

18. It is significant that, in determining the results of the tests made by Mr. Vandeweghe, he, like Miss Shapiro, *visually* compared the color of his two controls, the liquid containing the hairs from a known natural and a dyed skin, respectively, with the unknown, which he was testing. (Italic supplied.) It was also Mr. Vandeweghe's opinion that it is possible for two chemists to remove and test hairs from the same fur garment and each obtain opposite results, as in this case, one positive and the other negative.

19. In rebuttal, Commission counsel offered the testimony of Dr. Moos, its fur consultant, who testified that, in his opinion, the possibility of the hairs becoming contaminated by any substance contained in the paper of the envelope, as suggested by Mr. Ackerbauer, was extremely remote. (Mr. Ackerbauer had testified, Paragraph 15 above, that there is a possibility of contamination from the sodium

bisulphite contained in the paper of the envelopes.) Dr. Moos also testified: Sodium bisulphite is a reducing agent, not a dye, used on the pulp in the manufacture of paper and is completely neutralized during the process of making the paper, and would have no effect on the 4 Pyridylpyridinium Dichloride test as performed by the Commission technician, Miss Shapiro. Even if a trace of sodium bisulphate were still present in the paper envelope, this would not affect or change the result of the test; it would be the same. Dr. Moos did not agree with Mr. Vandeweghe's use of water in stripping the dye-stuff from the hairs. Dr. Moos preferred the pyridine solution, which was used by Miss Shapiro. In the opinion of Dr. Moos, "you wouldn't get a sufficient solution of dye from the mink hair by plain water, \* \* \* that is the reason why we use the pyridine to strip". This may explain the negative results from the tests made by Mr. Vandeweghe. It may be that his use of water did not remove the dye from the hairs and, therefore, his tests were negative.

20. Upon consideration of all the evidence, the hearing examiner finds that the tests of the hairs conducted by the Commission laboratory technician, Miss Shapiro, wherein she found that said hairs had been dyed, were proper and valid tests. On the other hand, respondents have not established by a preponderance of the evidence their contention that there was a possibility that the hairs tested by Miss Shapiro had been contaminated by their being placed in standard white Federal Trade Commission franked envelopes by Mr. Curry, the Commission investigator.

21. The charge of false advertising and invoicing originated from a consignment of mink fur products from B. Wollman & Bros., to H. Liebes & Co., a department store in San Francisco, California, early in April, 1961. Either in late March or early April, 1961, Mr. Sheldon Wollman, Vice-President of the corporate respondent, phoned Mr. Norman A. Schwartz, then fur buyer for H. Liebes & Co., San Francisco, California, and offered H. Liebes & Co., approximately 100 pieces of mink fur products at approximately fifty cents on the dollar, with the authorization to use the name "B. Wollman & Bros." as the manufacturer in any advertisements of the furs by H. Liebes & Co. The offer was strictly on a consignment basis. Liebes could return any of the fur products it did not sell. Mr. Schwartz was interested in the offer and went to New York and inspected most of the fur products included in the offer. Mr. Sheldon Wollman informed Mr. Schwartz of Wollman's former price of each fur product and the reduced price to H. Liebes & Co. From the corporate respondent's records, Mr. Wollman exhibited to Mr. Schwartz copies of invoices

1617

## Initial Decision

showing the prices at which many of the fur products included in the offer had previously been consigned for sale to other retail stores in the United States. Not having been sold, the furs had been returned to corporate respondent. This process had been repeated several times each year on the fur products here involved. Their average age was approximately four years. In any event, Mr. Schwartz accepted the offer and requested that corporate respondent send to H. Liebes & Co., a list of the fur products to be included in the consignment, including the item number and a description of each fur product, its former price and Wollman's price to H. Liebes & Co. (Tr. 304-326.)

22. About one week prior to the arrival of the consigned fur products, H. Liebes & Co., received in the United States mail a typewritten list of the fur products which had been requested by Mr. Schwartz. This list was typewritten, on 8½" x 11" typewriter paper, and received in evidence as CX 17A-D. (After its receipt by H. Liebes & Co., some of its employees added numerous dollar figures and other markings in pencil, ink and crayon on each page of the list. These later markings were excluded when CX 17A-D was received in evidence.) To give an idea of the general form of the list (CX 17A-D), information with respect to the first three or four fur products at the top of the first page of the list (CX 17A) is set out as follows:

		Former price	Your cost	Your cost loaded
829				
2027	Ranch Jkt.....	\$1,750.00	\$950.00	\$1,032.61
800				
2122	Ranch Jkt.....	1,350.00	750.00	815.22
800R				
4000	Ranch Jkt.....	1,400.00	650.00	706.52
538X				
2662	Ranch Jkt.....	1,450.00	750.00	815.22

The figures on the extreme left-hand side of CX 17A refer to the "style" and "item" number of each fur product. These numbers are marked on the label and attached to each fur garment. The words "Ranch Jkt." are Wollman's description of the fur product. The figures under the column marked "Former Price" are Wollman's previous price for the fur product, and the figures under the column "Your Cost" are the reduced price to H. Liebes & Co. When the fur products were shipped from B. Wollman & Bros., to H. Liebes & Co., they were accompanied by consignment memoranda or invoices which listed the item number and a description of each fur product, and the

price thereof to H. Liebes & Co. Copies of these invoices were received in evidence as CX 20 through 35, inclusive.

23. At the original hearing, Mr. Sheldon Wollman denied that either he or the corporate respondent had prepared CX 17A-D, or that either of them had mailed CX 17A-D to H. Liebes & Co. The hearing examiner reserved his ruling on respondents' objection to its receipt in evidence pending the taking of depositions of H. Liebes & Co., employees in San Francisco, with respect to the authenticity of CX 17A-D. Subsequently, counsel supporting the complaint learned that Mr. Norman A. Schwartz, formerly fur buyer for H. Liebes & Co., was then residing in New York, New York. Instead of taking depositions, a further hearing was scheduled for New York, New York, at which time Mr. Schwartz appeared and testified. Mr. Schwartz testified, among other things, that: (Tr. 304-326) He was fur buyer for H. Liebes & Co., and negotiated in its behalf the consignment transaction here involved; that CX 17A-D was received by H. Liebes & Co., from B. Wollman & Bros., through the United States mail, and contained the information which Mr. Schwartz had requested from Sheldon Wollman. Mr. Schwartz identified CX 93 as an advertisement placed by H. Liebes & Co., in the April 18, 1961, issue of the San Francisco Chronicle, advertising the consigned Wollman furs for sale at one-half price; and CX 94, a letter dated April 12, 1961, from Sheldon Wollman, Vice-President of B. Wollman & Bros., to H. Liebes & Co., which refers to the consigned furs, Wollman's former price, and the reduced price to H. Liebes & Co. Undoubtedly, the prices mentioned in this letter refer to the prices set out in the list which Mr. Schwartz had requested from B. Wollman & Bros., CX 17A-D. That CX 17A-D was prepared by B. Wollman & Bros., is also substantiated by the testimony of Mr. Harry Marder, Wollman's bookkeeper, who was called as a witness for respondent at the subsequent hearing held on July 11, 1963. (Tr. 336-345) Mr. Marder was called by counsel for respondents on another matter, but on cross-examination (Tr. 345), Mr. Marder identified CX 17A-D as a typewritten list made up in the office of the corporate respondent and testified that the list was made up by Mr. Sheldon Wollman from the records kept by Mr. Marder. Accordingly, it is found that CX 17A-D was prepared by or at the direction of Mr. Sheldon Wollman, Vice-President of B. Wollman & Bros., Inc., and mailed to H. Liebes & Co., in response to the previous request of Mr. Schwartz, fur buyer for H. Liebes & Co.

24. The specific allegations set out in the complaint will now be taken up *seriatim*. Paragraph Three of the complaint alleges that



1617

## Initial Decision

certain of corporate respondent's fur products were misbranded or otherwise falsely or deceptively labeled in that said fur products were labeled to show that the fur contained therein was natural, when, in fact, such fur was bleached, dyed or otherwise artificially colored, in violation of Section 4(1) of the Fur Products Labeling Act. Copies of the labels attached to some of the corporate respondent's fur products were recorded by Mr. Curry, the Commission investigator, on the envelopes containing the hair samples, and received in evidence as CX 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14. These labels described the particular fur products as being "natural", whereas, the tests made by the Commission laboratory technician found that said fur products had been dyed. It is found, therefore, that the allegations in Paragraph Three of the complaint have been established.

25. Paragraph Four of the complaint alleges that certain of corporate respondent's fur products were misbranded in that they were not labeled in accordance with Section 4(2) of the Fur Products Labeling Act, and in the manner and form prescribed by the Rules and Regulations promulgated thereunder. It was further alleged that, among such misbranded products, were fur products with labels which failed to disclose that the fur contained in the fur products was bleached, dyed, or otherwise artificially colored, when such was the fact. Section 4(2) of the Fur Products Labeling Act requires that the label on a fur product show in words and figures plainly legible that the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact. Copies of labels attached to some of corporate respondent's fur products which the Commission laboratory technician found to have been dyed were received in evidence as CX 1, 1A, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 19. Since it has been found that fourteen of the fur products involved in this proceeding were dyed or otherwise artificially colored, and the labels affixed to said fur products represented them as being natural, or at least did not designate the fur product as being "dyed", it follows that the allegations of Paragraph Four of the complaint have been established.

26. Paragraph Five of the complaint alleges that certain of said fur products were 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) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in abbreviated form, in violation of Rule 4 of said Rules and Regulations.

(b) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth in the required sequence, in violation of Rule 30 of said Rules and Regulations.

(a) Commission Exhibits 3, 4, 5, 7, and 11 are examples of corporate respondent's violations of Rule 4. For instance, the label on respondent's fur product, Item No. 3190 (CX 3), describes the fur product as "Nat. Graphite Ranch Coat". The word "natural" is in abbreviated form, which is a violation of Rule 4 of said Rules and Regulations. The same abbreviations occur on the copies of labels set out on CX 4, 5, 7, and 11. (b) Rule 30 of the Rules and Regulations under the Fur Products Labeling Act provides that the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations shall be set forth in specified sequence. To set forth the color of the fur product in immediate proximity with the animal name is a violation of this Rule. *In the Matter of Paul J. Lighton, et al.*, Docket 8305, April 25, 1962 [60 F.T.C. 821]. As an example, on corporate respondent's fur product, Item No. 3093 (CX 1), the fur product is described on the label as "Natural Tourmaline Mink Jackette". Other examples are the labels reproduced on CX 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 13A, and 14. Accordingly, it is found that the allegations of Paragraph Five of the complaint have been established.

27. Paragraph Six of the complaint alleges that certain of corporate respondent's fur products were falsely and deceptively invoiced in that said fur products were invoiced to show that the fur contained therein was natural, when, in fact, such fur was bleached, dyed, or otherwise artificially colored in violation of Section 5(b)(2) of the Fur Products Labeling Act. Commission Exhibit 16, which is one of the consignment invoices to H. Liebes & Company, invoices Item Nos. 3015 and 2065 at "Nat.", whereas, the Commission laboratory tests of the hairs removed from said fur products showed that said furs had been dyed. Also, corporate respondent's invoice to Hebel & Schultz (CX 19A), describes Item No. 2956 as "N", whereas, the tests of the hairs removed from said fur product showed that said mink product had been dyed. It is found, therefore, that the allegations of Paragraph Six of the complaint have been established.

28. Paragraph Seven of the complaint alleges that certain of said fur products were falsely and deceptively invoiced in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder. Section 5(b)(1)(c) of such Act provides that the fur product

1617

## Initial Decision

shall be considered to be falsely or deceptively invoiced if such fur product is not invoiced to show "that the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact". In CX 16 a fur product, Item No. 3015, is invoiced to H. Liebes & Co., as "Nat. Blue Iris Lutetia Mink Coat", and Item No. 2065, is invoiced as "Nat. Graphite (Ranch) Mink Cape", whereas, the tests of the hairs from these garments (CX 7, 13, and 13A, respectively) made by the Commission laboratory technician shows that they had been dyed. Likewise, corporate respondent invoiced a fur product, Item No. 2956, as "N" (CX 19A), whereas, a test by the Commission laboratory technician (CX 19) on hairs removed from this fur product showed that said fur product had been dyed. Therefore, it is found that the allegations of Paragraph Seven of the complaint have been established.

29. Paragraph Eight of the complaint alleges that certain of corporate respondent's products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in that the information required under Section 5(b)(1) of said Act and the Rules and Regulations thereunder was set forth in abbreviated form, in violation of Rule 4 of said Rules and Regulations. Rule 4 requires, among other things, that, in invoicing, the required information shall not be abbreviated, but shall be spelled out fully. In the consignment invoice to H. Liebes & Co. (CX 16), Item No. 3015, the word "natural" is abbreviated "Nat.". In the invoice to Hebel & Schultz (CX 19A), Item No. 2956 is abbreviated "N". Required information is also abbreviated on copies of invoices received in evidence as CX 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, and 32. It is found, therefore, that the allegations of Paragraph Eight of the complaint have been established.

30. Paragraph Nine of the complaint alleges that certain of said fur products were falsely or deceptively advertised in that said fur products were not advertised as required under the provisions of Section 5(a) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder, which said advertisements were intended to aid, promote, and assist, directly or indirectly, in the sale and offering for sale of said fur products. Among and included in the advertisements as aforesaid, it was alleged, were advertisements in the form of price lists and other documents and memoranda which were distributed by respondents in New York to customers in California and other states

Initial Decision

63 F.T.C.

outside the State of New York. Among such false and deceptive advertisements of fur products were advertisements which failed:

(a) To disclose the name or names of the animal or animals that produced the fur contained in the fur product as set forth in the Fur Products Name Guide, in violation of Section 5(a)(1) of the Fur Products Labeling Act.

(b) To disclose that fur products contained or were composed of bleached, dyed or otherwise artificially colored fur, when such was the fact, in violation of Section 5(a)(3) of the Fur Products Labeling Act.

(c) To disclose the name of the country of origin of the imported fur contained in fur products in violation of Section 5(a)(6) of the Fur Products Labeling Act.

It is the contention of counsel supporting the complaint that CX 17A-D constituted false advertising under the doctrine announced by the Commission in *Leviant Bros., Inc., et al.*, Docket 7194, July 31, 1959, 56 F.T.C. 120, which was followed in *Harry Graff & Son, Inc., et al.*, Docket 7188, July 31, 1959, 56 F.T.C. 92, which states in part:

Section 5(a) of the Fur Act states in pertinent part that:

For the purposes of this Act, a fur product or fur shall be considered to be falsely or deceptively advertised if any advertisement, representation, public announcement or notice which is intended to aid, promote, or assist directly or indirectly in the sale or offering for sale of such fur product or fur—

\* \* \* \* \*

(5) \* \* \* contains any form of misrepresentation or deception, directly or by implication, with respect to such fur product or fur.

It is clear from this language that a single representation to a prospective purchaser, as distinguished from a public announcement, may constitute advertising within the meaning of the section. Moreover, there is nothing in the wording of this section or in the legislative history of the Act to indicate that a consignment memorandum may not serve as a medium for conveying a representation or notice "which is intended to aid, promote, or assist directly or indirectly in the sale or offering for sale" of a fur product or fur.

The record shows that respondents set forth fictitious comparative prices on consignment memorandums issued by them in connection with the consignment to Arnold Constable of certain fur products which were later purchased by that firm. These consignment memorandums were received by consignee prior to the consummation of the sale to it of the products described therein. It is clear, therefore, that these documents were intended to aid or assist in the sale or offering for sale of the products to Arnold Constable. We think the conclusion is inescapable that the fictitious prices listed therein constituted false representations to the prospective purchaser which were intended for the same purpose. It should be pointed out, in this connection, that while there is no evidence that the consignee was deceived by these representations, the statute does not require any showing that a prospective purchaser was deceived or that the false representations were made under such circumstances

1617

## Initial Decision

that a prospective purchaser might be deceived. It is our opinion, therefore, that the fur products in question were falsely advertised within the meaning of Section 5(a)(5) of the Act.

See also, Opinion of the Commission in Edgar Gevirtz, an individual trading as *Regal Furs*, Docket 8446, July 17, 1962 [61 F.T.C. 74]; also *Jacques DeGorter v. F.T.C.*, 244 F. 2d 270.

By reference to CX 17A-D, the following violations will be noted:

1. Failure to use animal name such as "Mink", in violation of Section 5(a)(1).

2. Failure to designate fur products as bleached, dyed, etc., in violation of Section 5(a)(3). See Item No. 3145, CX 17A and CX 16. Also, Item No. 3015, CX 17D, which should have been designated as "Dyed Mink". CX 7, Tr. 125. Also, Item No. D2364, CX 17A, which should have been designated as "Bleached Ermine Cape". CX 16. Also, Item No. 944-505, CX 17D, should have been designated as "Dyed Broadtail-processed Lamb". RX 7Z-12.

3. Failure to set forth the country of origin, in violation of Section 5(a)(6). CX 17D. Item No. 534-2627 should indicate Canada as the country of origin. See CX 33. See also, Item No. 1563, designated on CX 17D as "Wild Coat F.L.". CX indicates this item as "Natural *Canadian Mink*".

Item No. 868, designated on CX 17D as "Tipped Dyed Sable st. Stole", should have designated "Russia" as the fur origin. CX 34. It is found, therefore, that the allegations of Paragraph Nine of the complaint have been established.

31. Paragraph Ten of the complaint alleges that respondents, by means of the advertisements referred to in Paragraph Nine of the complaint, falsely and deceptively advertised their fur products in the following respects:

(a) Information required under Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in abbreviated form, in violation of Rule 4 of said Rules and Regulations.

(b) Fur products which were not pointed, bleached, dyed, tip-dyed or otherwise artificially colored were not described as natural as required by Rule 19 of said Rules and Regulations.

(a) Commission Exhibits 17A-D, 18, 93, and 94 are replete with examples where required information in advertisements is abbreviated. In many instances the word "Russia" is abbreviated as "Russ.", and the word "Silver" in the animal name "Silver Fox", is abbreviated "Sil.". (b) The same exhibits contain numerous examples where the word "natural" was omitted. This is true in instances

where a reference is made to "Ranch Jkt.", and other mink color designations such as "Lutetia", "Cerulean", etc. Accordingly, it is found that the allegations in Paragraph Ten of the complaint have been established.

32. Paragraph Eleven of the complaint alleges that, by means of the advertisements referred to in Paragraphs Nine and Ten, respondents falsely and deceptively advertised their fur products in that respondents represented fur products as having been reduced from regular or usual former prices where the so-called regular or usual former prices were, in fact, fictitious in that they were not the prices at which said merchandise was usually sold by respondents in the recent regular course of business, in violation of Section 5(a)(5) of the Fur Products Labeling Act. Counsel supporting the complaint contends that CX 17A-D, 18, 93, and 94 constitute evidence sufficient to establish this allegation. Counsel supporting the complaint also urges that the prices set forth in the column entitled "Former Price" in CX 17A-D were fictitious in that they were not the prices at which said merchandise was usually sold by corporate respondents in the recent regular course of business. Counsel urges that evidence to support this contention is contained in CX 36 through 91, inclusive. As an example, the first fur product listed on CX 17A is Item No. 2027, described on said exhibit as "Ranch Jkt.". The "Former Price" quoted to H. Liebes & Co., in this exhibit, CX 17A, as of April, 1961, is \$1,750. However, the evidence shows that, on March 13, 1961, less than one month previous to the offering of this product to H. Liebes & Co., the same Ranch Jacket, Item No. 2027, had been sent on consignment to Burger Phillips, Birmingham, Alabama, at an invoice price of \$1095. (CX 36) Another example is the fourth fur product listed on CX 17A, Item No. 2662, a "Ranch Jkt.", with a "Former Price" of \$1,450. Commission Exhibit 37 shows that this same "Ranch Jkt.", Item No. 2662, had previously, on March 24, 1961, been consigned to another firm, at a price of \$1,000. These are examples of the fact that the "Former Price" set forth in CX 17A-D is fictitious in that in the recent regular course of business and by respondents' exhibits (*infra*), even previous thereto, these fur products had been sent on consignment to other retail firms at a price substantially less than that set forth as "Former Price" in CX 17A-D.

Approximately 60 more examples similar to the above are in evidence. Itemization of the various exhibits which substantiate this finding is attached hereto as *Addendum I*. This *Addendum I* indicates the item number of the fur product, the Commission exhibit

1617

## Initial Decision

which sets forth the fictitious "Former Price", the Commission exhibit which indicates the amount of the previous offer in the recent regular course of business, and the Commission exhibit which is evidence of the fact that the same product was set on consignment to H. Liebes & Co., San Francisco, California, and was advertised in CX 17A-D.

It is ironical, but respondents have introduced into evidence exhibits which substantiate the contention that the "Former Price" mentioned in CX 17A-D is fictitious. *Addendum II*, attached hereto, sets forth the item number the Commission exhibit which sets forth the "Former Price" and the respondents' exhibit number with the lower former price set forth therein. While these respondents' exhibits may not be prices obtained in the recent regular course of business, they do indicate that even previous to the dates of CX-36 through 91, some of the items listed in CX 17A-D were offered at lower prices.

Also, RX 7Z-15, which is intended to indicate the previous or former price higher than that set forth for the same item in CX 17D, is dated July 5, 1961, three months subsequent to the former price representation made in CX 17D and therefore, will not be considered as evidence in this decision.

Respondents have introduced into evidence other consignment memoranda or invoices for some of the items listed in CX 17A-D in an effort to justify the "Former Price" set forth in that exhibit. While most of these exhibits may indicate that the "Former Price" was used at one time, the period of time covered by respondents' consignment memoranda, RX 6 through 7Z-67, includes prices in 1957, 1958, 1959, and 1960. While several may fall in December, 1960, the majority are certainly not the usual and regular prices of said merchandise in the recent regular course of business. They are, therefore, too remote in time to substantiate the "Former Price" set forth in CX 17A-D. Whereas all of the consignment invoices submitted by the Commission, namely, CX 36 through 91, appear to have been issued during the period September, 1960, to March 31, 1961, a period no earlier than six months previous to the questioned transaction, which should satisfy the "recent regular course of business" requirement.

While most cases coming before the Commission involving prices deal with products of similar type, grade and quality or comparable products sold in a given trade area, the facts in this case deal with the identical items which had been previously offered but not sold. Even in the previously mentioned types of cases the terms "List Price", "Retail Price" and words of similar import convey to the public the im-

pression that the price figures quoted in conjunction with those terms are the "Normal", the "Going", the "Generally Prevailing" or the "Usual and Customary" prices at which the product is being sold. *Coro, Inc.*, Docket 8346, November 6, 1963, p. 1164 herein. Certainly the representation "Former Price" would have the same, if not an even broader significance. In any event, the "Former Price" must be substantiated by sales in the recent regular course of business. *George's Radio and Television Company, Inc., et al.*, Docket 8134, January 19, 1962 [60 F.T.C. 179]. It is found, therefore, that the allegations of Paragraph Eleven of the complaint have been established.

33. Paragraph Twelve of the complaint alleges that the respondents, in advertising fur products for sale as aforesaid, made claims and representations respecting prices and values of fur products; that said representations were of the types covered by subsections (a), (b), (c), and (d) of Rule 44 of the Rules and Regulations promulgated under the Fur Products Labeling Act, and respondents failed to maintain full and adequate records disclosing the facts upon which such claims and representations were based, in violation of Rule 44(e) of said Rules and Regulations. The only evidence offered by respondents to rebut this allegation were copies of corporate respondent's consignment invoices of fur products to various retail stores, principally Saks Fifth Avenue, New York. These were consignment invoices dated during the years 1957, 1958, 1959, and 1960, at specified prices. The representations as to prices complained about in this proceeding were made in April, 1961, and prices quoted on consignment invoices during the years 1957, 1958, 1959, and 1960, do not, with nothing more, establish that such prices were the "usual and customary" prices for such fur products in April, 1961. Mr. Harry Marder, corporate respondent's bookkeeper, in answer to the question whether a fur garment invoiced on consignment to Saks Fifth Avenue at \$2,250 in 1958 would remain at the same price until consigned to H. Liebes & Co., in 1961, testified that it would depend on market conditions. (Tr. 342) "If the market went down, as any other commodity, the price would go down. If the market were strong, it would go up." Rule 44(b) provides as follows: "No person shall, with respect to a fur or fur product, advertise such fur or fur product with comparative prices and percentage savings claims except on the basis of current market values or unless the time of such compared price is given." It has been found in Paragraph 30 hereof that the issuance by corporate respondent of CX 17A-D constituted the advertising of such fur products with comparative prices. However, respondent has not established with competent evidence that the "Former Prices" re-



1617

Initial Decision

ferred to in CX 17A-D were the "current" prices in April, 1961, as required by said subsection (b) of Rule 44. Respondents' evidence does not meet the requirement of Rule 44(e). Upon the basis of all the evidence, it is found that the allegations of Paragraph Twelve of the complaint have been established.

## CONCLUSION

The aforesaid acts and practices of respondents, as herein 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.

## ORDER

*It is ordered*, That respondents, B. Wollman & Bros., Inc., a corporation and its officers, and Barney Wollman, Sheldon Wollman, Herman Wallman, and Harry Wallman, 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, manufacture for introduction, 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 manufacture for sale, 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:

## 1. Misbranding fur products by:

A. Representing directly or by implication on labels that the fur contained in fur products is natural when the fur contained therein is pointed, bleached, dyed tip-dyed, or otherwise artificially colored.

B. Failing to affix labels to fur products showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.

C. Setting forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form on labels affixed to fur products.

D. Failing to set forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder on labels in the se-

quence required by Rule 30 of the aforesaid Rules and Regulations

2. Falsely or deceptively invoicing fur products by:

A. Representing directly or by implication on invoices that the fur contained in fur products is natural when such fur is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

B. Failing to furnish invoices to purchasers of fur products showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 5(b) (1) of the Fur Products Labeling Act.

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

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 any fur product and which:

A. Fails to set forth in words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 5(a) of the Fur Products Labeling Act.

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

C. Fails to describe fur products as natural when such fur products are not pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

D. Represents, directly or by implication, that any price, when accompanied or unaccompanied by any descriptive language, was the price at which the merchandise advertised was usually and customarily sold by the respondents unless such advertised merchandise was in fact usually and customarily sold at such price by respondents in the recent past.

E. Misrepresents in any manner the savings available to purchasers of respondents' fur products.

4. Making claims and representations of the types covered by subsections (a), (b), (c), and (d) of Rule 44 of the Rules and Regulations promulgated under the Fur Products Labeling Act unless there are maintained by respondents full and adequate records disclosing the facts upon which such claims and representations are based.

1617

Initial Decision

Addendum I

Item No.	CX 17	Former price	Previous offer	CX amount	Consignment memo—CX
2027	A	\$1,750.00	36	\$1,095.00	35
2662	A	1,450.00	37	1,000.00	35
2140	A	1,375.00	38	1,200.00	20
2001	A	975.00	39	700.00	20
			40	850.00	20
3082	A	775.00	41	695.00	20
			42	450.00	20
D2364	A	1,175.00	43	1,000.00	16
3145	A	1,650.00	44	1,050.00	16
3114	A	1,700.00	45	1,095.00	24
1948	A	1,550.00	46	1,150.00	24
			47	750.00	24
3063	A	2,250.00	48	1,095.00	24
1655	A	1,850.00	49	1,250.00	25
2738	B	1,150.00	50	650.00	21
2945	B	850.00	51	495.00	21
2363	B	1,050.00	52	675.00	21
			53	800.00	21
2577	B	675.00	54	525.00	21
			55	495.00	21
2616	B	950.00	56	550.00	21
2544	B	850.00	57	675.00	21
2543	B	1,550.00	58	750.00	21
2823	B	1,050.00	59	695.00	22
2580	B	700.00	60	600.00	22
1930	B	1,150.00	61	595.00	22
2286	B	1,000.00	62	750.00	22
2436	B	1,050.00	63	495.00	20
2532	B	1,250.00	64	795.00	20
2586	B	1,350.00	65	895.00	20
3094	B	1,050.00	66	650.00	23
2500	B	1,250.00	67	1,000.00	23
			68	750.00	23
2512	B	1,750.00	69	950.00	23
			70	1,500.00	23
2902	B	1,150.00	71	750.00	23
3004	B	1,150.00	72	900.00	23
2523	B	1,050.00	73	595.00	23
2536	B	1,150.00	74	800.00	23
3115	B	1,150.00	75	1,050.00	20
2099	C	950.00	76	850.00	26
			77	750.00	26
2604	C	700.00	78	450.00	26
2943	C	850.00	79	750.00	26
1212	C	650.00	80	325.00	26
2597	C	650.00	81	295.00	26
2556	C	850.00	82	375.00	27
2550	C	600.00	83	450.00	27
1465	C	600.00	84	400.00	27
1961	C	750.00	85	425.00	27
2852	C	495.00	86	325.00	27
2833	C	2,850.00	87	1,595.00	28
2575	C	2,150.00	88	1,295.00	28
2683	C	2,650.00	89	2,500.00	29
			90	2,500.00	29
2996	C	2,950.00	91	2,650.00	29
2527	C	3,850.00	92	3,000.00	29
			93	3,250.00	29
			94	3,250.00	29
			95	2,500.00	29
2626	C	3,950.00	96	3,150.00	30
2647	C	4,250.00	97	3,250.00	30
3015	D	4,950.00	98	3,950.00	16
			99	4,000.00	16
2656	D	3,250.00	100	2,750.00	31
1432	D	3,250.00	101	2,350.00	31
2968	D	4,750.00	102	2,500.00	32
2549	D	3,000.00	103	2,250.00	32
3045	D	3,750.00	104	2,500.00	32
3000	D	3,250.00	105	2,250.00	33
2812	D	3,650.00	106	2,500.00	33
505	D	1,950.00	107	1,495.00	34
			108	1,450.00	34
868	D	1,150.00	109	575.00	34
979	D	1,650.00	110	1,400.00	34
			111	1,350.00	34
3016	D	5,250.00	112	4,350.00	16
			113	4,500.00	16

Syllabus

63 F.T.C.

*Addendum II*

Item No.	Commission Exhibit	Former price	Respondents' Exhibit	Former price
	17			
2001	A	\$975.00	7F	\$850.00
9182	A	1850.00	7J	1750.00
1518	A	1450.00	7S	1250.00
944-505	D	1950.00	7Z-12	1495.00
2529	D	2250.00	7Z-13	2200.00
2065	D	5000.00	7Z-13	4000.00
2943	C	850.00	7Z-22	750.00
2996	C	2950.00	7Z-40	2650.00
2616	B	950.00	7Z-48	900.00
2286	B	1000.00	7Z-54	950.00

## FINAL ORDER

The Commission, on November 19, 1963, having issued an order staying the effective date of the decision herein, and the Commission now having determined that the case should not be placed on its own docket for review:

*It is ordered*, That the initial decision of the hearing examiner, filed October 9, 1963, be, and it hereby is, adopted as the decision of the Commission.

*It is further ordered*, That respondents B. Wollman & Bros., Inc., a corporation, and Barney Wollman, Sheldon Wollman, Herman Wallman, and Harry Wallman 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 set forth in the initial decision.

## IN THE MATTER OF

## JAMES B. TOMPKINS ET AL.

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

*Docket 8567. Complaint, Apr. 30, 1963—Decision, Dec. 5, 1963*

Order issued in default requiring the California manufacturer and distributors of a toy product designated "ARCH-A-BALL"—consisting of a headband holding a transparent visor over the upper face and eyes and with an inflatable plastic ball attached to the center front by a rubber string, to be punched like a punching bag—to cease representing that the toy was safe for use by such practices as furnishing to dealers window posters and other advertising containing depictions of a child using the toy, and placing the depictions also on the display containers along with the statement: "Simple-