

pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

5. Failing to set forth the term "Dyed Broadtail-processed Lamb" in the manner required where an election is made to use that term instead of the term "Dyed Lamb".

6. Failing to set forth information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder with respect to each section of fur products composed of two or more sections containing different animal furs.

B. Falsely or deceptively advertising fur products through the use of any advertisement, representation, public announcement or notice which is intended to aid, promote, or assist, directly or indirectly, in the sale, or offering for sale of fur products, and which fails to describe as natural fur products which are not pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

C. 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.

It is further ordered, That the respondents herein 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 this order.

IN THE MATTER OF

KENTON LEATHER PRODUCTS, INC., ET AL.

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

Docket 7812. Complaint, Mar. 10, 1960—Decision, Nov. 13, 1962*

Order dismissing without prejudice, for failure of proof, complaint charging New York City manufacturers with attaching to their leather wallets and billfolds, tickets upon which a certain amount was printed along with the words "Comparable Billfolds", when in fact respondents' wallets or billfolds were inferior in grade and quality to products selling for the amount so printed.

*As amended October 26, 1960.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the Kenton Leather Products, Inc., a corporation, and Murray Smallman and Michael Kaye, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of the said 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 Kenton Leather Products, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business at 101 West 31st Street, New York City, N.Y.

Individual respondents Murray Smallman and Michael Kaye are officers of the corporate body. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacture, offering for sale, sale and distribution of leather wallets and billfolds to retailers for resale to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said product, when sold, to be shipped from their place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents, for the purpose of inducing the purchase of their product, have engaged in the practice, in connection therewith, of attaching or causing to be attached, tickets to their wallets or billfolds, upon which a certain amount is printed, accompanied by the legend "Comparable Billfolds", thereby representing, directly or by implication, that their said wallets or billfolds were of like grade and quality in all material respects to other wallets or billfolds currently offered for sale and sold at this amount printed on the ticket. In truth and in fact, respondents' said wallets or billfolds were inferior in grade and quality in material respects to other wallets and billfolds currently selling for the amount printed on said tickets.

PAR. 5. By the aforesaid practice, respondents place in the hands of retailers means and instrumentalities by and through which they may mislead the public into the belief that the grade and quality of respondents' wallets or billfolds are comparable to the grade and quality of wallets or billfolds of competitors, selling or sold at the amounts printed on the aforesaid ticket.

PAR. 6. In the course and conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of wallets of the same general kind and nature as that sold by respondents.

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practice has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' product by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Anthony J. Kennedy, Jr., for the Commission.

Howrey, Simon, Baker and Murchison, of Washington, D.C., for the respondents.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

Respondents are charged in the Commission's complaint issued on March 10, 1960, with practices alleged to be misleading and deceptive in violation of the Federal Trade Commission Act. The crux of the charges are set forth in paragraphs 4 and 5 as follows:

"Respondents, for the purpose of inducing the purchase of their product, have engaged in the practice, in connection therewith, of attaching or causing to be attached, tickets to their wallets or billfolds, upon which a certain amount is printed, accompanied by the legend 'Comparable Billfolds', thereby representing, directly or by implication, that their said wallets or billfolds were of like grade and quality

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in all material respects to other wallets or billfolds currently offered for sale and sold at this amount printed on the ticket. In truth and in fact, respondents' said wallets or billfolds were inferior in grade and quality in material respects to other wallets and billfolds currently selling for the amount printed on said tickets."

"By the aforesaid practice, respondents place in the hands of retailers means and instrumentalities by and through which they may mislead the public into the belief that the grade and quality of respondents' wallets or billfolds are comparable to the grade and quality of wallets or billfolds of competitors, selling or sold at the amounts printed on the aforesaid ticket." (As amended October 26, 1960.)

Proposed findings of fact and conclusions of law were filed by counsel for the parties on March 16, 1962. Oral argument was had thereon on March 20, 1962. The hearing examiner has carefully reviewed and considered same. Proposed findings and conclusions which are not herein adopted, either in the form proposed or in substance, are rejected as not supported by the record or as involving immaterial matters.

Upon the entire record in the case, the hearing examiner makes the following:

FINDINGS OF FACT

1. Respondent, Kenton Leather Products, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 101 West 31st Street, New York, New York.

2. Individual respondent Murray Smallman is an officer of the corporate respondent. Individual respondent Michael Kaye was an officer of the corporate respondent until the date of his death on February 11, 1960. Their address was the same as that of the corporate respondent.

3. Individual respondent Murray Smallman formulated, directed and controlled the acts and practices of the corporate respondent, including the acts and practices set forth in the complaint in this matter.

Individual respondent Murray Smallman is the president of the corporate respondent and has been from the very incorporation of this business. This has been a corporation with the ownership equally divided between Murray Smallman and Michael Kaye until there was a new division of stock in August 1959, at which time certain stock was given to the children of Murray Smallman and Michael Kaye. However, at that time Murray Smallman and Michael Kaye reserved to themselves the majority shares of voting stock, i.e., Murray Small-

man 60 shares of Class A Stock and Michael Kaye 60 shares of Class B Stock.¹ The Board of Directors of the corporate respondent consisted of Murray Smallman, Michael Kaye and their wives. After the death of Michael Kaye in February 1960, the Board consisted of Murray Smallman, Adele Smallman and Mrs. Michael Kaye. There is no evidence of record to indicate that Mrs. Adele Smallman and Mrs. Michael Kaye ever took an active interest in the business of the corporate respondent.

4. Respondents are now, and for some time last past have been, engaged in the manufacture, offering for sale, sale and distribution of leather wallets and billfolds to retailers for resale to the public.

5. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia and maintain, and at all times mentioned herein have maintained a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

6. Respondents, for the purpose of inducing the purchase of their product, have engaged in the practice, in connection therewith, of attaching or causing to be attached, tickets to their wallets and billfolds, upon which a certain amount is printed, accompanied by the legend "Comparable Billfolds"; thereby representing directly or by implication that their said wallets or billfolds were of like grade and quality in all material respects to other wallets and billfolds currently offered for sale and sold at this amount printed on the ticket. In truth and in fact respondents' said wallets and billfolds were inferior in grade and quality in material respects to other wallets and billfolds currently selling for the amount printed on said tickets.

7. By the aforesaid practice, respondents place in the hands of retailers means and instrumentalities by and through which they may mislead the public into the belief that the grade and quality of respondents' wallets or billfolds are comparable to the grade and quality of wallets or billfolds of competitors, selling or sold at the amounts printed on the aforesaid ticket.

8. In the course and conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of wallets of the same general kind and nature as that sold by respondents.

¹ There is a total of 100 issuable shares of Class A Stock; also, the same number of issuable shares of Class B Stock.

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CONCLUSIONS

It must be concluded from the evidence that during the period contemplated by the complaint respondents engaged in the deceptive practice of selling billfolds and wallets ticketed as being "Comparable Billfolds" to those of competitors, when in fact they were inferior. There can be no doubt that a reasonable inference can be drawn from the semantics used by respondents that the legend "Comparable Billfolds" means comparability in grade, quality and value to competitors' billfolds retailed at the same or higher price. In fact, the theory of respondents' defense does not contest this.

The Commission's first witness, Virgil E. Hickman, an attorney-examiner for the Commission described the manner in which he obtained the wallets and billfolds that became Commission Exhibits 3A, 4A, 8D and 9C. Commission Exhibit 3A was purchased by him on October 27, 1959, at Gilchrist's in Boston² at a price of \$2.99. Commission Exhibit 4A was purchased at Snellenberg's in Philadelphia at a price of \$2.99 on October 19, 1959.³ Commission Exhibit 8D was obtained from the sales office of Prince Gardner in New York in November 1959. Mr. Hickman testified that he asked for a wallet that retailed at \$7.50.⁴ He also stated that he had seen the identical wallet in many stores.⁵ Commission Exhibit 9C was obtained from the sales office of Buxton in New York on November 23, 1959. His testimony further indicates it was substantially identical to those he had seen in the stores that retail at \$7.50.⁶

Since these last two wallets were not purchased in retail stores, the hearing examiner was reluctant to consider this latter evidence of much probative weight.⁷ Accordingly, counsel supporting the complaint introduced evidence by stipulation and exhibits to establish that these identical models were actually retailed at the list price of \$7.50.⁸

From the foregoing, therefore, it is evident that the Princess Gardner wallet, Commission Exhibit 8D, and the Buxton wallet, Commis-

² See Commission Exhibit 3H.

³ See Commission Exhibit 4F.

⁴ See Tr. p. 116.

⁵ See Tr. p. 125.

⁶ See Tr. p. 129.

⁷ See Tr. pp. 127, 133.

⁸ With respect to the Princess Gardner wallet see the stipulation at Tr. p. 256 and Commission Exhibits 14, 15, 16 and 17 which reflect that model 19R55T was received by Martin's Department Store, Brooklyn, New York, and placed on sale during the month of August 1959. This is the same model as Commission Exhibit 8D.

With respect to the Buxton wallet, a stipulation was entered in the record at Tr. p. 301 to the effect that on August 28, 1959, the Buxton Corporation shipped to Becker's Leather Goods in Washington, D.C., six wallets, Model 20BSD. These wallets were received on September 8, 1959, and shortly thereafter were put on sale at the price of \$7.50. This model is the same model as Commission Exhibit 9C.

sion Exhibit 9C, were on sale in the retail stores, prior to the purchase of the Kenton wallets, Commission Exhibits 3A and 4A in October 1959.

An expert, Paul Sterne, made a comparison of the aforesaid wallets. He was eminently qualified to do so. He had been in the leather business for over thirty years. He first learned the leather business in a tannery in Offenbach, Germany, from 1926 to 1936. From 1941 to 1954 he was with Centra Leather Goods, a wallet manufacturer, and from 1954 to 1960 with two leather importers.⁹ He compared the Kenton wallet, Commission Exhibit 4A, with the Buxton wallet, Commission Exhibit 9C. It was his opinion, based chiefly on the leather quality and the quality of workmanship that the Buxton wallet, Commission Exhibit 9C was superior.¹⁰ He then compared the Kenton wallet, Commission Exhibit 3A to the Princess Gardner wallet, Commission Exhibit 8D. Again it was his opinion that the Princess Gardner wallet was superior to the Kenton wallet, principally with respect to the leather quality and the workmanship quality.¹¹

Respondents' defense is essentially three-fold:

1. Commission Exhibits 3 and 4 (Kenton wallets) should not be compared with Commission Exhibits 8 and 9 (Prince Gardner and Buxton wallets) since the latter wallets were not purchased until one month after the Kenton wallets and were not on the retail market at the same time as Commission Exhibits 3 and 4.

2. The Kenton wallets (Commission Exhibits 3 and 4) were shop-worn and therefore not representative of like models then on the market which were comparable to competitors' wallets and billfolds at the same or higher retail price.

3. Commission Exhibits 3 and 4 were not otherwise typical or representative of respondents' wallets which were ticketed "Comparable Billfolds". Furthermore, respondents' wallets typically were comparable to the wallets of competitors sold at the same or higher price.

As regards respondents' point that Commission Exhibits 3 and 4 (Kenton wallets) should not be compared with Commission Exhibits 8 and 9 (Prince Gardner and Buxton wallets) since the latter wallets were not purchased until one month after the Kenton wallets and, therefore, were not on the retail market at the same time, there seems to be little merit. Assuming this contention is correct, it must reasonably be presumed, in the absence of evidence to the contrary, that wallets purchased one month after the Kenton wallets were purchased,

⁹ See Tr. pp. 176-177.

¹⁰ See Tr. p. 184.

¹¹ See Tr. p. 187.

