

Complaint

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IN THE MATTER OF

HARRY KREITMAN INC., ET AL.

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

Docket C-311. Complaint, Feb. 7, 1963—Decision, Feb. 7, 1963

Consent order requiring New York City dealers in new and secondhand fur products to cease violating the Fur Products Labeling Act by failing to label fur products; failing to show on invoices the true animal name of furs, the country of origin of imported furs, and when the fur in fur products was used, artificially colored, or natural; naming an animal other than that which produced a fur, and failing to set forth the terms "Dyed Broadtail-processed Lamb" and "Persian Lamb" on invoices as required; and failing in other respects to comply with labeling and invoicing 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 Harry Kreitman Inc., a corporation, and its officers, Samuel Kreitman and Abraham Kreitman, 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 Harry Kreitman Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Individual respondents Samuel Kreitman and Abraham Kreitman are officers of corporate respondent. They formulate, direct and control the acts, practices and policies of corporate respondent Harry Kreitman Inc., including those hereinafter set forth.

Respondents are dealers in fur products both secondhand and new and have their office and principal place of business at 123 West 29th Street, New York, N.Y.

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 sale, advertising, and offering for sale, in commerce, and in the transportation and distribution in commerce, of fur products; and have 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 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 without labels.

PAR. 4. 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 that required item numbers were not set forth on labels, in violation of Rule 40 of said Rules and Regulations.

PAR. 5. Certain of said fur products were falsely and deceptively invoiced by the respondents 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:

1. To show the true animal name of the fur used in the fur product.
2. To show the country of origin of the imported furs used in the fur product.
3. To show that the fur product contains or was composed of used fur, when such was the fact.
4. To disclose that the fur contained in the fur products was bleached, dyed or otherwise artificially colored, when such was the fact.

PAR. 6. Certain of said fur products were falsely and deceptively invoiced in that respondents set forth on invoices pertaining to fur products the name of an animal other than the name of the animal that produced the fur, 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 violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in the following respects:

- (a) 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.

(b) The term "Dyed Broadtail-processed Lamb" was not set forth in the manner required by law, in violation of Rule 10 of said Rules and Regulations.

(c) The term "natural" was not used to describe fur products that were not pointed, bleached, dyed, tip-dyed or otherwise artificially colored, in violation of Rule 19(g) of said Rules and Regulations.

(d) The term "Persian Lamb" was not set forth in the manner required, in violation of Rule 8 of said Rules and Regulations.

(e) The disclosure "secondhand", where required, was not set forth on invoices, in violation of Rule 23 of said Rules and Regulations.

(f) Required item numbers were not set forth on invoices, in violation of Rule 40 of said Rules and Regulations.

PAR. 8. 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 and unfair methods of competition in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and the Fur Products Labeling Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent, Harry Kreitman 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 123 West 29th Street, in the city of New York, State of New York.

Respondents Samuel Kreitman and Abraham Kreitman are officers of said corporation and their address is the same as that of said corporation.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents, Harry Kreitman Inc., a corporation, and its officers, and Samuel Kreitman and Abraham Kreitman, 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 into commerce, or the sale, advertising, or offering for sale in commerce or the transportation or distribution in commerce of any fur product; or in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

1. 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.

2. Failing to set forth on labels the item number or mark assigned to a fur product.

B. Falsely or deceptively invoicing fur products by:

1. 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.

2. Setting forth on invoices pertaining to fur products the name or names of any animal or animals other than the name of the animal or animals producing the fur contained in the fur products as specified in the Fur Products Name Guide and as prescribed under the Rules and Regulations.

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

4. Failing to set forth the term "Persian Lamb" in the manner required where an election is made to use that term instead of the term "lamb".

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5. Failing to disclose in the manner required that fur products contain or are composed of "secondhand used fur".

6. Failing to set forth on invoices the item number or mark assigned to a fur product.

7. 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".

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

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

ZIFF-DAVIS PUBLISHING COMPANY

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2(d)
OF THE CLAYTON ACT

Docket C-312. Complaint, Feb. 7, 1963—Decision, Feb. 7, 1963

Consent order requiring a New York City publisher of magazines and books to cease violating Sec. 2(d) of the Clayton Act by making promotional payments to operators of chains of retail outlets in railroad and bus terminals, airports, hotels and office buildings without making them available on proportionally equal terms to all other competing customers; and, following discontinuance of said allowances, by using a "Retail Display Sales Plan" tailored to the operations of the customers who had previously received favored treatment and never available on proportionally equal terms to those formerly discriminated against—paying \$24,148.61 in allowances since inception of the plan to its most favored customer though that customer had not performed substantially as required.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described, has violated and is now violating the provisions of subsection (d) of Section 2 of the Clayton Act (U.S.C. Title 15, Sec. 13), as amended by the Robinson-Patman Act, hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Ziff-Davis Publishing Company is a corporation organized, existing and doing business under and by virtue

of the laws of the State of Delaware, with its principal office and place of business located at One Park Avenue, New York, N.Y. Said respondent, among other things, has been engaged and is presently engaged in the business of publishing and distributing various publications including magazines under copyrighted titles. Respondent publishes nine monthly magazines, including "Popular Photography" and "Car and Driver." Respondent publishes "Modern Bride" magazine bimonthly. Respondent publishes five annual magazines, including "Photography Annual" and "Electronic Experimenter's Handbook." Respondent has also engaged in the publication of hardback books and paperback books. Respondent's sales of publications during the calendar year 1960 exceeded \$6,700,000.

PAR. 2. Publications published by said respondent are distributed by said respondent to customers through its national distributor, MacFadden Publications, Inc., hereinafter referred to as MacFadden.

MacFadden has acted and is now acting as national distributor for the publications of several independent publishers, including respondent publisher. MacFadden, as national distributor of publications published by said respondent and other independent publishers has performed and is now performing various services for these publishers. Among the services performed and still being performed by MacFadden for the benefit of these publishers are the taking of purchase orders and the distributing, billing and collecting for such publications from customers. MacFadden had also participated in the negotiation of various promotional arrangements with the retail customers of said publishers, including said respondent.

In its capacity as national distributor for respondent Ziff-Davis Publishing Company, in dealing with the customers of said respondent, MacFadden served and is now serving as a conduit or intermediary for the sale, distribution and promotion of publications published by said respondent.

PAR. 3. Respondent Ziff-Davis Publishing Company, through its conduit or intermediary, MacFadden, has sold and distributed and now sells and distributes its publications in substantial quantities in commerce, as "commerce" is defined in the Clayton Act, as amended, to competing customers located throughout various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business in commerce, respondent Ziff-Davis Publishing Company has paid or contracted for the payment of something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished, or contracted to be furnished, by or through such cus-

tomers in connection with the handling, sale, or offering for sale of publications sold to them by said respondent. Such payments or allowances were not made available on proportionally equal terms to all other customers of said respondent competing in the sale and distribution of such publications.

PAR. 5. As an example of the practices alleged herein, respondent, through its conduit or intermediary, MacFadden, had paid various promotional allowances to certain of respondent's favored retail customers. Said favored customers operated chains of retail outlets located in railroad and bus terminals and airports, as well as in hotels and office buildings. Such allowances were not offered or made available on proportionally equal terms to all of respondent's other customers competing with said favored customers in the sale and distribution of respondent's publications. Such allowances were individually negotiated and were discontinued on or about April 15, 1961.

At approximately the same time that the aforesaid allowances were discontinued, respondent adopted a "Retail Display Sales Plan." This plan purports to be expressly offered to all retailers and purports to be available to all retailer customers of respondent on proportionally equal terms. As a matter of fact, said plan, in its inception and in its operation and administration, was and is tailored to the operations of those customers who had previously received favored treatment from respondent, and said plan is not now and never was available on proportionally equal terms to those customers against whom respondent had discriminated previously. Said "Retail Display Sales Plan" discriminates against respondent's unfavored customers in the following ways:

1. The terms of said plan require each retailer who desires to participate to make application to respondent Ziff-Davis. Respondent did not employ the same means of communicating notice of said plan to its favored customers as was used to notify its nonfavored customers. Respondent communicated directly with its favored customers. Respondent purported to notify its nonfavored customers by one advertisement in a trade journal and by requesting its local distributors to notify each nonfavored customer individually. Many of respondent's nonfavored customers were never made aware of the existence of said display plan.

2. The minimum service required to be performed by respondent's retailer customers in return for the payment of an allowance is full cover display of seven of respondent's monthly magazines for the entire on-sale period, full cover display of respondent's bimonthly

