

IN THE MATTER OF
ASSOCIATED DRY GOODS CORPORATION, ET AL.

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

Docket 7184. Complaint, July 11, 1958—Decision, Dec. 14, 1959

Order requiring a nation-wide merchandiser with main office in New York City to cease violating the Fur Products Labeling Act by falsely identifying animals producing certain furs and by failing in other respects to conform to labeling and invoicing requirements; and by advertising in newspapers which failed to disclose the names of animals producing certain furs or the fact that fur products contained artificially colored fur, and represented prices as reduced from higher prices without giving the time of such compared prices.

Mr. John J. McNally for the Commission.

Sheppard, Mullin, Richter, Balthis & Hampton, by *Mr. Gordon F. Hampton*, of Los Angeles, Calif., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The respondents are charged with having violated the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, in connection with the sale and distribution of furs and fur products through the operations of the J. W. Robinson Company store in Los Angeles, California. By answer these charges of the complaint are denied. Hearings were held, at which evidence in support of and in opposition to the allegations of the complaint was received, duly recorded and filed with the Federal Trade Commission. Proposed findings and conclusions have been filed. Upon the basis of the entire record the following findings of fact have been made and conclusions reached:

1. Respondent Associated Dry Goods Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its office and principal place of business located at 261 Madison Avenue, New York, New York. It conducts business in the State of California under the name of J. W. Robinson Company. Respondent Rene P. Sommer is Divisional Merchandise Manager and Fur Products Buyer of the corporate respondent, and in such capacity controls, directs and formulates the acts, practices and policies of the fur department of the corporate respondent doing business as J. W. Robinson Com-

pany. His office and principal place of business is 600 West Seventh Street, Los Angeles, California.

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. The specific charges of the complaint and the facts related thereto are as follows:

Misbranding:

3. Paragraphs 3, 4 and 5 of the complaint relate to misbranding. Paragraph 3 charges that certain fur products were misbranded in that they were falsely and deceptively labeled with respect to the name or names of the animals that produced the fur from which said products were manufactured, in violation of §4(1) of the Fur Act; paragraph 4 charges that certain fur products were misbranded in that they were not labeled as required by the provisions of §4(2) of the Fur Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder; paragraph 5 charges that certain fur products were misbranded in violation of the Fur Act, in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Information required under §4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was mingled with nonrequired information, in violation of Rule 29(a) of the aforesaid Rules and Regulations;

(b) All the information required under §4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set out on one side of such labels, in violation of Rule 29(a) of the aforesaid Rules and Regulations;

(c) Information required under §4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in handwriting on labels, in violation of Rule 29(b) of the aforesaid Rules and Regulations; and

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

4. The sections of the Fur Act and the Rules which are alleged to have been violated are as follows:

Sec. 4. For the purposes of the Act, a fur product shall be considered to be misbranded—

(1) if it is falsely or deceptively labeled or otherwise falsely or deceptively identified, or if the label contains any form of misrepresentation or deception, directly or by implication, with respect to such fur product;

(2) if there is not affixed to the fur product a label showing in words and figures plainly legible—

(A) the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to section 7(c) of this Act;

(B) that the fur product contains or is composed of used fur, when such is the fact;

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

(D) that the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact;

(E) the name, or other identification issued and registered by the Commission, of one or more of the persons who manufacture such fur product for introduction into commerce, introduce it into commerce, sell it in commerce, advertise or offer it for sale in commerce, or transport or distribute it in commerce;

(F) the name of the country of origin of any imported furs used in the fur product;

RULE 20—*Fur Products Composed of Pieces.*

(a) Where fur products, or fur mats and plates, are composed in whole or in substantial part of paws, tails, bellies, sides, flanks, gills, ears, throats, heads, scrap pieces or waste fur, such fact shall be disclosed as a part of the required information in labeling, invoicing and advertising. Where a fur product is made of the backs of skins such fact may be set out in labels, invoices and advertising.

RULE 29—*Requirements in Respect to Disclosure on Label.*

(a) The required information shall be set out on the label in a legible manner and in not smaller than pica or twelve (12) point type, and all parts of the required information shall be set out in letters of equal size and conspicuousness. All of the required information with respect to the fur product shall be set out on one side of the label and no other information shall appear on such side except the lot or style number and size. The other side of the label may be used to set out any non-required information which is true and non-deceptive and which is not prohibited by the Act and Regulations, but in all cases the animal name used shall be that set out in the Name Guide.

(b) The required information may be set out in hand printing provided it conforms to the requirements of (a), and is set out in indelible ink in a clear, distinct, legible and conspicuous manner. Handwriting shall not be used in setting out any of the required information on the label. (16 CFR §301.29)

RULE 30—*Arrangement of Required Information on Label.*

(a) The applicable parts of the information required with respect to the fur to appear on labels affixed to fur products shall be set out in the following sequence.

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(1) That the fur product contains or is composed of pointed, bleached, dyed, or tip-dyed fur when such is the fact;

(2) The name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur;

(3) That the fur product is composed in whole or in substantial part of paws, tails, bellies, sides, flanks, gills, ears, throats, heads, scrap pieces, or waste fur, when such is the fact;

(4) The name of the country of origin of any imported furs used in the fur product;

(5) Any other information required or permitted by the Act and Regulations with respect to the fur.

(b) That part of the required information with respect to the name or registered identification number of the manufacturer or dealer may precede or follow the required information set out in (a). (16 CFR §301.30.)

5. Four labels were presented which related to sable garments and showed (the word "label," as used herein, refers to copy as well as original)—

<i>Fur</i>	<i>On the front</i>	<i>Fur origin</i>	<i>On the back</i>
(1) Dyed Sable		U.S.A.	Dyed American Sable
(2) Dyed Sable		Canada	Dyed Sable
(3) Sable		Canada	Dyed Amer. Sable
(4) Dyed Sable		Russia	Dyed Russian Broadtail—Sable

The Fur Products Name Guide, issued by the Federal Trade Commission on February 8, 1952, as an appendix to the Rules And Regulations Under The Fur Products Labeling Act, sets forth the names by which various animals must be identified in labeling, advertising and invoicing fur products. "Sable" is recognized as the name of an animal which generally originates in Russia. "American Sable" is the name prescribed for use when the animal originates in North America, and should have appeared on the front of the first three labels, Rule 29 providing that all the required information with respect to a fur product shall be set out on one side of the label. Although the first three labels referred to above appear not to be deceptive or misleading, yet they do not comply with the requirements of the Rules, and are in violation of the Fur Act in that respect. Label (4) was on a garment made of "Dyed Broad-tail Lamb" with a "Natural Sable Collar," all of which should have been shown on the front of the label. Label (4) was defective.

6. Four labels related to mink garments, and showed:

<i>Fur</i>	<i>On the front</i>	<i>Fur origin</i>	<i>On the back</i>
(1) Mink		Japan	Japanese Mink
(2) Dyed Mink		Japan	Dyed Mink
(3) Mink		U.S.A.	Bleached Jasmine Mink
(4) Mink		U.S.A.	Silver Blue Mink

Faults:

The proper animal name in the first two instances was "Japanese Mink," and, since all Japanese mink used commercially is dyed, the proper animal designation for use on the front of each of the first two labels was "Dyed Japanese Mink." The fact that the third and fourth garments were bleached or dyed should have been shown on the face of the labels. Also, the information on the label on the fourth garment was handwritten, not printed. All four labels are faulty.

7. Three labels related to fox garments, and showed:

<i>Fur</i>	<i>On the front</i>	<i>Fur origin</i>	<i>On the back</i>
(1) Fox		U.S.A.	Platina Fox
(2) Fox		Canada	Natural White Fox
(3) Fox		Alaska	Black Dyed Red Fox

Faults:

The Guide lists nine separate kinds of fox. There is no separate, unqualified "Fox" designation. Undoubtedly, label (1), on its face, should have shown "Platinum Fox"; (2), "White Fox"; and (3), "Dyed Red Fox." All three are faulty.

8. Three labels referred to muskrat garments, and showed:

<i>Fur</i>	<i>On the front</i>	<i>Fur origin</i>	<i>On the back</i>
(1) Dyed Muskrat		U.S.A.	Dyed N. Flank Muskrat
(2) Dyed Flank Muskrat		U.S.A.	Dyed Flank Muskrat
(3) Dyed Muskrat		U.S.A.	Dyed Flank Muskrat

Faults:

All three labels should have shown, on the front, "Dyed Muskrat Flank"; and under Rule 30, the words should appear in that order. As used on the backs of the three labels, and on the front of label (2), the words are not in proper sequence. Although there is no charge in the complaint specifically relative thereto, the fact that the furs consisted of flanks is required information under Rule 20, and should have been shown on the face of all three labels.

9. Of the five remaining labels introduced in evidence, two were on forms obviously not designed for use on fur garments, and were faulty in many respects. However, the inference is that the regular fur labels which had been on these garments had become detached, and some careless or uninformed clerk had attached labels customarily used by respondents on garments not made of fur. No conclusions as to violations will be based on these two labels. The other three labels showed:

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<i>Fur</i>	<i>On the front</i>	<i>Fur origin</i>	<i>On the back</i>
(1) Dyed Broadtail		South	Dyed Broadtail Processed Lamb
	Processed Lamb	America	
(2) Persian Lamb		Southwest	Blk. Persian Lamb
		Africa	
(3) Beaver		Canada	Dyed Beaver Rose Beige

Faults:

In (1) the name of the country of origin should be specific as to country rather than merely the name of a continent; in (2), the lamb having been dyed, the garment should have been shown on the face of the label as "Dyed Persian Lamb"—the "Persian Lamb" designation is permissible under Rule 8(a); and in (3), the fact that the garment was dyed is not shown on the front of the label.

10. Of the nineteen labels presented, seven were procured by the Commission's investigator February 16, 1956; one was procured April 2, 1956, and eleven November 14, 1956. Between February 16, 1956, and November 14, 1956, the investigator had examined approximately 700 of respondents' fur garments, and during the six years that the Fur Act had been in effect, had visited respondents' Los Angeles fur department twelve or fifteen times. Besides the labels copied and brought in, he stated there were others which he believed to be deficient but did not copy. During the fiscal year which ended February 2, 1957, the Robinson store had 2,966 transactions which involved fur products; in the succeeding fiscal year there were 2,879 such transactions; and from February 2, 1958 to September 4, 1958 there were 1,750. The respondents urge that under these circumstances the evidence presented falls far short of establishing sufficient facts to warrant the issuance of a cease-and-desist order, in that the number of claimed deficiencies is highly insubstantial, and respondents' efforts at compliance have been diligent and as effective as can be expected in a retail establishment, no matter how carefully supervised.

11. Respondents showed that their sales personnel are given frequent instruction as to the requirements of the Fur Act; the manager in charge makes a spot check approximately once each week, during which he examines labels and price tickets of the fur garments in stock; and every reasonable precaution is taken to comply with the Fur Act and the Rules. The errors in labeling disclosed by the record, respondents contend, are such as will inevitably occur so long as the human element is so intricately involved. A cease-and-desist order, they maintain, will not prevent such errors.

12. The Commission's policy in this respect is not firmly estab-

lished. In *Eugene Dietzgen Co. v. Federal Trade Commission*, 142 F. 2d 321, the Seventh Circuit Court said:

The propriety of the order to cease and desist, and the inclusion of a respondent therein, must depend on all the facts which include the attitude of respondent toward the proceedings, the sincerity of its practices and professions of desire to respect the law in the future and all other facts.

In the matter of *Stanrich Mills Corporation and Maurice Marcus*, 50 FTC 1120 at 1129, referring to the question as to whether there was sufficient evidence to require the issuance of a cease-and-desist order in the public interest, the Hearing Examiner, in an initial decision which was adopted as the decision and opinion of the Commission, said "the insubstantiality of the evidence of actual violation is a factor to be considered," and upon the facts of record the conclusion was reached that the public interest did not require any corrective action in that proceeding, which was accordingly dismissed.

13. It then "appearing to the Commission that a proceeding by it * * * would be in the public interest," the complaint herein was issued July 11, 1958. Presumably all the facts which have been presented in support of the allegations of the complaint were before the Commission at that time. New, of course, are the facts as to the extent and character of respondents' fur operations in the California area, which bring into comparable perspective the data relating to respondents' violations of the Fur Act and the Rules thereunder. The discretion as to how such facts may affect the public interest is the Commission's discretion, and may be raised upon appeal. A violation of the Fur Act and the Rules having been established, a cease-and-desist order with respect thereto will be issued herein.

False Invoicing:

14. Paragraphs 6 and 7 of the complaint contain the allegations that certain of respondents' fur products were falsely and deceptively invoiced in violation of the Fur Act and the Rules and Regulations promulgated thereunder. Counsel in support of the complaint offered certain evidence including sales slips in support of these allegations, but such was rejected, among other reasons, because of the holding in *Mandel Brothers, Inc. v. Federal Trade Commission*, 254 F. 2d 18 (1958). Due to the failure of receiving this evidence, the record lacks support for these allegations. The *Mandel* holding, however, has been overruled by the Supreme Court of the United States in *Federal Trade Commission v. Mandel Brothers, Inc.*, 359 U.S. 385 (1959). It is now clear that a retail sales

slip is an "invoice" within the meaning of the Fur Act, and that the evidence offered on this question should not have been refused for the reasons given. On the other hand, the corporate respondent is prohibited by the Commission's order in *Associated Dry Goods Corporation*, Docket No. 7260 (March 20, 1959), from engaging in practices such as those alleged to be unlawful in paragraphs 6 and 7 of the complaint, so that further proceedings on this question are not considered necessary.

False Advertising:

15. Paragraphs 8, 9 and 10 of the complaint relate to false advertising, and charge:

(1) that the advertisements failed to disclose animal names as required by §5(a)(1) of the Fur Act;

(2) that the advertisements failed to disclose that certain fur products contained bleached, dyed or otherwise artificially colored fur, as required by §5(a)(3) of the Fur Act; and

(3) that in the advertisements respondents represented that the prices of certain fur products were "reduced from previous, higher prices, without giving the time of such compared prices, in violation of Rule 44(b)."

The pertinent parts of §5(a)(1) and §5(a)(3) of the Fur Act are as follows:

Sec. 5. (a) 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—

(1) does not show the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to section 7(c) of this Act;

* * * * *

(3) does not show that the fur product or fur is bleached, dyed, or otherwise artificially colored fur when such is the fact; * * *.

16. As to improper description of the fur articles advertised, (1) and (2) above, the facts disclosed by respondents' advertisements are as follows:

(1) Animal Name Not Shown

(a) In the Los Angeles Times of March 30, 1956, a garment was described as a "Black dyed Russian Broadtail cape with sable collar." The word "lamb" was omitted between "broadtail" and "cape."

(b) In the Los Angeles Times of April 2, 1956, the word "lamb" was again omitted in the description, "Black dyed Russian broad-

tail capelet with sable collar." This appears to be the same garment as that shown in (a) above.

(c) In the Los Angeles Times of January 6, 1958, three garments are described, respectively, as "Argenta" coat; "Tourmaline" deep cape stole; and "Black dyed Russian Broadtail" coat. The last two items appear in the same form in the Los Angeles Herald Express of January 8, 1958. The animal name is omitted in these listings.

(d) In the Los Angeles Times of February 27, 1957, is mentioned a "Russian scarf," no animal name given.

(e) In the Los Angeles Examiner of March 29, 1957, "mouton jackets" are listed without animal name.

(2) Fact that garments were dyed or otherwise
artificially colored not shown

(a) The Los Angeles Times of February 27, 1957, contained an advertisement in which respondents described one of their products as "Mouton processed lamb jacket." The record discloses that "Mouton processed lamb" is lambskin which has been processed to simulate beaver, and that the process necessarily includes dyeing or other artificial coloring. This is established by the uncontradicted testimony of Rene Paul Sommer, a witness who testified for the Commission. The fact that the fur was dyed was not set forth in the above-referred to advertisement. As shown in the illustration in Rule 9(a), this clearly should have been done. This rule states:

The term "Mouton-processed Lamb" may be used to describe the skin of a lamb which has been sheared, the hair straightened, chemically treated, and thermally set to produce a moisture repellent finish; as for example: "*Dyed Mouton-processed Lamb*." [Emphasis supplied.]

There is no showing that the particular garment advertised was dyed, except as that may have been involved in and implied by the Mouton processing. Under the quoted rule, the description used would appear to be ample. Moreover, this is the only instance cited by counsel supporting the complaint relating to this charge of the complaint. Under the *de minimis* rule and upon the evidence adduced, the charge in this respect cannot be found to have been established by substantial, probative evidence, and it should be dismissed.

17. During the period of time over which the advertisements referred to in the preceding paragraph extended—from March, 1956 to January, 1958—respondents ran more than 140 advertisements in metropolitan Los Angeles newspapers, advertising a total of more

than 2,200 fur garments. Evidence was introduced as to deficient descriptions of only these few garments. Respondents aver that, as in the case of faulty labeling, the evidence here "falls far short of establishing anything requiring the issuance of a cease-and-desist order"; that the number of deficiencies shown is "highly insubstantial," which in itself demonstrates that respondents are operating upon a basis of compliance with the Fur Act, and that it would be a miscarriage of justice for a cease-and-desist order to be issued as to these charges of the complaint. The testimony of three responsible officials of the J. W. Robinson Company is that they are diligently and conscientiously endeavoring to comply with the Fur Act and the Rules. Respondents' contentions again present the issue of public interest, as to which the comments contained in paragraph 13, above, are applicable, and upon the basis of the conclusion there stated, some violations of the Fur Act and the Rules having been established, a cease-and-desist order as to the charges here being discussed will hereinafter be included.

Pricing Practices

18. The pricing charge is specific in paragraph 10 of the complaint—that "respondents represented prices of fur products as having been reduced from previous, higher prices, without giving the time of such compared prices, in violation of Rule 44(b)." There is no charge in the complaint that Rule 44(a) was violated, and no violation thereof is shown by the evidence. Rule 44 is titled "Misrepresentation of Prices." In order to understand the specific detail in which the Rule deals with various advertising practices, it is essential that it be examined as a whole. There are seven paragraphs, as follows:

(a) No person shall, with respect to a fur or fur product, advertise such fur or fur product at alleged wholesale prices or at alleged manufacturers cost or less, unless such representations are true in fact; nor shall any person advertise a fur or fur product at prices purported to be reduced from what are in fact fictitious prices, nor at a purported reduction in price when such purported reduction is in fact fictitious.

(b) 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.

(c) No person shall, with respect to a fur or fur product, advertise such fur or fur product as being "made to sell for," being "worth" or "valued at" a certain price, or by similar statements, unless such claim or representation is true in fact.

(d) No person shall, with respect to a fur or fur product, advertise such

fur or fur product as being of a certain value or quality unless such claims or representations are true in fact.

(e) Persons making pricing claims or representations of the types described in subsections (a), (b), (c) and (d) shall maintain full and adequate records disclosing the facts upon which such claims or representations are based.

(f) No person shall, with respect to a fur or fur product, advertise such fur or fur product by the use of an illustration which shows such fur or fur product to be a higher priced product than the one so advertised.

(g) No person shall, with respect to a fur or fur product, advertise such fur or fur product as being "bankrupt stock," "samples," "show room models," "Hollywood Models," "Paris Models," "French Models," "Parisian Creations," "Furs Worn by Society Women," "Clearance Stock," "Auction Stock," "Stock of a business in a state of liquidation," or similar statements, unless such representations or claims are true in fact.

19. Respondents have, in numerous advertisements, offered fur garments at reduced prices. Of the more than 140 advertisements hereinbefore mentioned as having been used by respondents during the period involved, some fifty-seven contained pricing statements and representations relating to more than 823 garments. These pricing statements as to specific garments followed a general pattern of which there were variations, illustrated by the following typical extracts which followed garment descriptions:

formerly \$650.00, now \$495.00;
regularly \$795.00, now \$595.00;
was \$225.00, now \$175.00; and
\$225.00 \$125.00.

20. Through these statements respondents represented prices of fur products as having been reduced from previous higher prices. The lower prices in the advertisements indicated the prices at which the garments were being offered to the public currently; the higher prices indicated the prices at which the garments had previously been offered for sale by the J. W. Robinson Company. The time during which the higher prices had been or were in effect is not disclosed in the advertising.

21-23. The fur advertisements of respondents presented in evidence contain comparative price representations in which the lower figures indicated are the prices at which the garments were being currently offered and the higher figures the prices at which the garments previously had been offered for sale by the respondents. That the higher prices were the previous prices of the respondents rather than purported current market values is clear from the representations themselves, as well as from the testimony of Alton B. Garrett, Assistant Treasurer of the J. W. Robinson Company. In addition to price comparisons above mentioned, the following are illustrative:

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regularly \$89.00, to clear at \$39.00
regularly \$595.00, reduced to \$350.00
regularly \$795.00, now just \$595.00
was \$1395.00, now priced at \$995.00
originally \$150.00, now \$99.50
was \$225.00, now \$175.00

Such price comparisons do not mention the time at which the higher prices were in effect as required by Rule 44(b) in these circumstances.

24. Respondents assert that the business and activities of Associated in the State of California under the name of the J. W. Robinson Co. are those of a separate and independently managed division of Associated Dry Goods Corporation; that said business is locally managed insofar as the purchase, pricing, labeling, advertising, sale, and distribution of furs and fur products are concerned; that the scope of the charges set forth in the complaint are confined and limited to that division of said corporation known as the J. W. Robinson Co. and are not to be taken to affect or concern operations outside of California; and that if any order other than dismissal is issued herein affecting corporate operations, such order should be confined to the J. W. Robinson Co. division and the California operation. In other words, respondents would like to enjoy the advantages of their nation-wide organization operating as Associated Dry Goods Corporation without having to assume equally wide responsibility for its conduct. The J. W. Robinson Co. is not an independent organization; plans which it had before absorption into the larger company, to open a new store in Pasadena, had to be approved after such absorption by Associated before the project could be carried out. The operating head of the Robinson store has full responsibility for its operation, subject to such suggestions as may come from the president of Associated. It is the policy of Associated to suggest rather than to order. The president of J. W. Robinson Co. testified that since January 1955, when Robinson became a division of Associated, he "had not received yet an order from the President of Associated to do something. He only suggests that this may be desirable and so on." There is no indication that any "suggestion" coming from Associated's president is ever disregarded, and, for all practical purposes, such a suggestion is tantamount to an order. Associated has filed a certificate with the proper California authorities that it is operating under the J. W. Robinson name in Los Angeles. All of these facts point to the conclusion that ultimate responsibility for the acts and practices of the J. W. Robinson Company rests with Associated Dry Goods

Corporation, and it is so found. The individual respondent, Rene P. Sommer, who controls, directs and formulates the acts, practices and policies of the J. W. Robinson Co. fur department, also will be included in the order issued herein.

CONCLUSIONS

1. The provisions of the Fur Act and the Rules and Regulations thereunder have been violated by respondents in the following respects. On certain of their fur products the labels were faulty, in that

(a) the correct names of the animals which produced the furs used in the garments were not shown;

(b) the fact that certain garments contained furs which had been bleached, dyed or otherwise artificially colored was not shown;

(c) all the required information was not set forth on one side of the label;

(d) required information was in handwriting, not printed;

(e) required information was not in proper sequence;

(f) the country of origin of imported furs used in the fur products was not properly shown; and

(g) the fact that certain garments were composed of flank was not properly shown.

2. In respondents' advertising, certain of their fur products have been improperly described, in that (a) in some instances, the names of the animals that produced the furs used in the garments advertised have not been disclosed, (b) the term "Mouton-processed Lamb" was used without indicating that the product referred to was made of fur which was dyed, and (c) price comparison representations have omitted reference to the time at which the former higher prices were in effect.

3. The allegations contained in Paragraphs 6 and 7 of the complaint should be dismissed.

4. Responsibility for the acts and practices found herein to be in violation of the Fur Act and the Rules and Regulations thereunder rests upon respondents Associated Dry Goods Corporation and Rene P. Sommer.

5. The acts and practices of respondents herein found to be in violation of the Fur Act and the Rules and Regulations thereunder constituted, and now constitute, unfair and deceptive acts and practices in commerce within the meaning of the Federal Trade Commission Act.

6. This proceeding is in the public interest, and the issuance of

an appropriate order as to the practice found to be in violation of the Fur Act and the Rules and Regulations is proper. Accordingly,

It is ordered, That respondent Associated Dry Goods Corporation, a corporation, and its officers, and respondent Rene P. Sommer, as an individual and as an employee 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, offering for sale, 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 or 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. Falsely or deceptively labeling or otherwise identifying any such product as to the name or names of the animal or animals that produced the fur from which such products were manufactured.

2. Failing to affix labels to fur products showing all of the information required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.

3. Setting forth on labels attached to fur products:

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

(b) Required information in handwriting;

(c) Required information in improper sequence.

4. Failing to set forth all of the required information on one side of the labels attached to such products.

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:

1. Fails to disclose:

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

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

2. Compares the prices of fur products with other prices without giving the time at which such other prices were in effect.

It is further ordered, That paragraphs 6 and 7 of the complaint be, and they hereby are, dismissed.

OPINION OF THE COMMISSION

By KERN, *Commissioner*:

The complaint herein charges the respondents with violating the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder. The hearing examiner in his initial decision held that the charges were sustained in part and included therein an order directing respondents to cease and desist the practices found to be unlawful.

The initial decision of the hearing examiner apparently satisfies nobody. It satisfied neither respondents nor counsel in support of the complaint, both of whom have filed cross appeals; moreover for reasons later stated, we find ourselves less than satisfied by his decision.

Respondent Associated Dry Goods Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its office and principal place of business located at 261 Madison Avenue, New York, New York. The practices of the respondents alleged to be unlawful relate to the sale and distribution of fur products through the J. W. Robinson Company, Los Angeles, California, an operating division of the corporate respondent. Respondent Rene P. Sommer is Divisional Merchandise Manager and Fur Products Buyer of the corporate respondent's J. W. Robinson division. In such capacity, he controls, directs and formulates the acts, practices and policies of the fur department of corporate respondent doing business as the J. W. Robinson Company.

APPEAL OF COUNSEL IN SUPPORT OF THE COMPLAINT

The appeal of counsel in support of the complaint raises issues involving the scope of the order, the matter of the rejection by the examiner of certain evidence and the examiner's dismissal of several paragraphs of the complaint.

The first issue we will consider is whether the hearing examiner erred in rejecting the offer in evidence of respondents' sales slips or invoices, and in dismissing Paragraphs Six and Seven of the complaint dealing with false and deceptive invoicing. The examiner made his ruling on the authority of *Mandel Brothers, Inc. v. Federal Trade Commission*, 254 F. 2d 18 (1958), wherein the Court of Appeals for the Seventh Circuit held that sales slips are not invoices within the meaning of the Fur Act, and also on the basis that such was his own opinion of the matter. This was directly

contrary to the Commission's view expressed in its opinion in the *Mandel Brothers* case, Docket No. 6434, July 5, 1957, and reaffirmed in *Federated Department Stores, Inc.*, Docket No. 6836, January 8, 1959, pending final judicial determination in *Mandel Brothers*. We regret the hearing examiner's failure to follow the Commission's views on this matter nor is our disquietude lessened by the fact that subsequently the Supreme Court has overruled the Seventh Circuit on this question. *Federal Trade Commission v. Mandel Brothers, Inc.*, 359 U.S. 385 (1959). In the circumstances the examiner was manifestly in error in refusing to receive the sales slip records.

The erroneous ruling of the hearing examiner leaves us in this position. The documents here in question have been accepted only as offers of proof, and the respondents have not had the opportunity to be heard on any objections they might have to receiving them into the record. As it now stands, there is no evidence supporting the allegations of the complaint as to false invoicing. On this subject, the corporate respondent herein is prohibited by the Commission's order in *Associated Dry Goods Corporation*, Docket No. 7260 (March 20, 1959), from failing to disclose on invoices furnished to purchasers of fur products certain information, including each of the items set forth in Section 5(b) of the Fur Act. These are the practices covered by Paragraphs Six and Seven of the complaint. Very little good would be accomplished in further pursuing the same issue in this proceeding. It is our opinion, therefore, that these allegations of the complaint should be dismissed.

Counsel in support of the complaint further contend that the examiner erred in dismissing Paragraph Nine (b) of the complaint which charges a violation of Section 5(a)(3) of the Fur Act. The specific allegation was that by means of certain advertisements respondents falsely and deceptively advertised their fur products in that said advertisements, among other things, failed to disclose that the fur products contained bleached, dyed, or otherwise artificially colored fur, when such was the fact.

The evidence supporting this allegation consists of an advertisement from the Los Angeles Times for February 27, 1957, stating, in pertinent part, "Mouton processed lamb jacket." The position of counsel in support of the complaint is that "Mouton processed Lamb" is dyed in the processing and, therefore, should be described with the use of the word "dyed." The examiner ruled that there was no showing that the particular garment advertised was dyed, except as such may have been involved in and implied by the Mouton processing and that the description used is ample under

Rule 9(a).¹ He further held that since this is the only instance cited, the allegation should be dismissed under the *de minimis* rule.

Rule 19 of the Rules and Regulations under the Fur Act clearly requires that a fur or fur product which is dyed be so described in labeling, invoicing and advertising. The evidence in this record, contrary to the examiner's finding, supports the conclusion that "Mouton-processed Lamb" is dyed. This is shown from the uncontradicted testimony of respondent Rene Paul Sommers. Thus, respondents' representation should have included the term "dyed." Rule 9(a) does not constitute any exception to the requirement for dyed furs or fur products, as the illustration therein clearly indicates. Furthermore, as a result of the hearing examiner's reliance here on the *de minimis* rule, we wish to emphasize that we consider this rule as having limited applicability in connection with such a statute as the Fur Act. Congress has explicitly spelled out what constitutes a violation of law, and it is our duty strictly to enforce the statute. In this area as in others the Commission wishes to discourage a plethora of testimony considered requisite to support a showing of a violation of the statute. We consider simplification of trial procedures and shortening of evidence demonstrable of statutory violations desirable. Nor is this a harsh position, for minor infractions with no past history of similar or comparable violations rarely furnish a basis for the invocation of the Commission's formal processes; usually such matters are disposed of informally with an assurance of discontinuance. In this connection it should be pointed out that the representation here involved does not stand alone, but is only one of a number of violations of the Fur Act, which are substantial in the aggregate. The examiner's application of the *de minimis* rule in these circumstances was clearly inappropriate. We hold that the examiner erred in the dismissal of this charge in the complaint.

An additional question raised by the appeal of counsel in support of the complaint is whether the examiner erred in dismissing paragraph 10 of the complaint which charged a violation of Rule 44(b) of the regulations under the Fur Act.² Said paragraph 10 reads: "In advertising fur products for sale, as aforesaid, respondents represented prices of fur products as having been reduced

¹ Rule 9(a) states: "The term 'Mouton-processed Lamb' may be used to describe the skin of a lamb which has been sheared, the hair straightened, chemically treated, and thermally set to produce a moisture repellent finish; as for example: 'Dyed Mouton-processed lamb.'"

² Rule 44(b) states:

"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."

from previous, higher prices, without giving the time of such compared prices, in violation of Rule 44(b) of the said Rules and Regulations."

In the opinion of the Commission a violation of Rule 44(b) has been shown. Rule 44(b) bans comparative price advertising except under two conditions: (1) where the compared figure is a statement of current market value, or (2) where the compared figure is another price and the time of such compared price is given.

The record shows numerous price comparison statements in respondents' advertising. The following are illustrative:

regularly \$89.00, to clear at \$39.00
regularly \$595.00, reduced to \$350.00
regularly \$795.00, now just \$595.00
was \$1395.00, now priced at \$995.00
formerly \$650.00, now \$495.00
originally \$150.00, now \$99.50
was \$225.00, now \$175.00

It is sufficiently clear from the testimony of Alton B. Garrett, Assistant Treasurer of J. W. Robinson Company, that in price comparison representations such as those referred to above, the lower figures indicated the prices at which the garments were then being offered to the public; the higher figures indicated the prices at which the garments previously had been offered for sale by the respondents. This is also evident from the wording of the representations. Since respondents' former prices are shown in these price comparisons, rather than current market values, the time at which the former prices were in effect should have been stated so as to comply with Rule 44(b). We conclude that violations have been shown in this respect, as alleged, and that the examiner erred in dismissing the pertinent charge in the complaint.

Lastly, counsel in support of the complaint contend that the order entered by the hearing examiner is deficient in that it does not direct the respondent to comply fully with the requirements of Section 4(2) of the Fur Act, citing as authority *Federal Trade Commission v. Mandel Brothers, Inc.*, 359 U.S. 385 (1959). Under Section 4(2), a fur product is misbranded if it does not have affixed to it a label showing each of the six different items of information therein set forth. The examiner found that certain of the respondents' labels were defective, relating to four of the required six categories of information. As to the remaining two, no omissions were noted. The order in the initial decision prohibits the misbranding of fur products through a failure to affix labels containing the four categories of information found to have been omitted, but not including the other two.

As the Commission explained in its opinion in the *Mandel* matter, *supra*: “* * * in any case in which it is found that the labeling or invoicing requirements of Sections 4(2) or 5(b)(1) of the statute have not been fully complied with, the appropriate conclusion is that the fur products in connection with which the deficiencies have occurred have been misbranded or falsely invoiced, and that the appropriate order to be issued in correction of the offense is one requiring cessation of the practice, namely, the misbranding or false invoicing by failure to attach proper labels or to issue proper invoices.”

In this instance the violations found embrace various acts and practices which the statute makes unlawful. They include infractions of Section 4(1), in that certain fur products were falsely and deceptively labeled as to the names of the animals producing the furs from which the products were manufactured, Section 4(2), in that there was a failure to disclose required information on the labels of fur products in connection with four of the six subsections thereunder, and Section 5(a), in that certain fur products were falsely and deceptively advertised, as well as violations of the Rules and Regulations promulgated under the Fur Act. The faults shown as to labeling include the failure to name the country of origin, the failure to show that furs had been dyed, the failure to indicate on the front of the label that the furs consisted of flanks, the failure to state the proper name of the animal that produced the fur, and others. The defects in the labels and the other violations shown in this record are numerous and substantial. In our opinion, there are no such differences between the facts in this matter and the *Mandel Brothers* case, *supra*, as would require the full interdiction in the one but not in the other. The order to cease and desist in this matter, therefore, will be modified to conform to the ruling in the *Mandel Brothers* case.

RESPONDENTS' APPEAL

Respondents' entire appeal is based on an asserted lack of public interest in issuing an order to cease and desist in this proceeding. They do not deny the showing that violations have occurred, nor do they argue that such infractions are merely technical. The gist of their contention is that the sum of the infractions indicated does not reasonably constitute such a showing as to warrant corrective action in the public interest. They cite *Stanrich Mills Corp.* and *Maurice Marcus*, 50 F.T.C. 1120 (1954), as supporting their argument for dismissal. That case, however, is entirely distinguishable on the facts. Among other things, there was only one or possibly two instances of misbranding shown. In this case, a number of misbranding viola-

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tions are disclosed, as well as false and deceptive advertising in violation of the Fur Act. Also, the former case involved other factors not present here. The violations shown by this record are substantial, and it is clearly in the public interest to enter an order preventing respondents from engaging in such practices. Their argument is rejected.

The respondents' appeal is denied and the appeal of counsel in support of the complaint is granted in part and denied in part. It is directed that an appropriate order be entered.

FINAL ORDER

Respondents and counsel supporting the complaint having filed cross-appeals from the hearing examiner's initial decision, and the matter having come on to be heard by the Commission upon the whole record, including briefs and oral argument in support of and in opposition to the appeals, and the Commission having rendered its decision denying respondents' appeal, granting in part and denying in part the appeal of counsel in support of the complaint and directing that an appropriate order be entered:

It is ordered. That paragraph numbered 14 of the findings contained in the initial decision be, and it hereby is, modified to read as follows:

14. Paragraphs 6 and 7 of the complaint contain the allegations that certain of respondents' fur products were falsely and deceptively invoiced in violation of the Fur Act and the Rules and Regulations promulgated thereunder. Counsel in support of the complaint offered certain evidence including sales slips in support of these allegations, but such was rejected, among other reasons, because of the holding in *Mandel Brothers, Inc. v. Federal Trade Commission*, 254 F. 2d 18 (1958). Due to the failure of receiving this evidence, the record lacks support for these allegations. The *Mandel* holding, however, has been overruled by the Supreme Court of the United States in *Federal Trade Commission v. Mandel Brothers, Inc.*, 359 U.S. 385 (1959). It is now clear that a retail sales slip is an "invoice" within the meaning of the Fur Act, and that the evidence offered on this question should not have been refused for the reasons given. On the other hand, the corporate respondent is prohibited by the Commission's order in *Associated Dry Goods Corporation*, Docket No. 7260 (March 20, 1959), from engaging in practices such as those alleged to be unlawful in paragraphs 6 and 7 of the complaint, so that further proceedings on this question are not considered necessary.

It is further ordered. That the subparagraph numbered (2) in the

paragraph numbered 16 contained in the initial decision be deleted and the following substituted therefor:

- (2) Fact that garments were dyed or otherwise artificially colored not shown

(a) The Los Angeles Times of February 27, 1957, contained an advertisement in which respondents described one of their products as "Mouton processed lamb jacket." The record discloses that "Mouton processed lamb" is lambskin which has been processed to simulate beaver, and that the process necessarily includes dyeing or other artificial coloring. This is established by the uncontradicted testimony of Rene Paul Sommer, a witness who testified for the Commission. The fact that the fur was dyed was not set forth in the above-referred to advertisement. As shown in the illustration in Rule 9(a), this clearly should have been done. This rule states:

"The term 'Mouton-processed Lamb' may be used to describe the skin of a lamb which has been sheared, the hair straightened, chemically treated, and thermally set to produce a moisture repellent finish; as for example: '*Dyed Mouton-processed Lamb.*'" [Emphasis supplied.]

It is further ordered, That paragraphs numbered 21, 22 and 23 contained in the initial decision be deleted and that the following be substituted therefor:

21-23. The fur advertisements of respondents presented in evidence contain comparative price representations in which the lower figures indicated are the prices at which the garments were being currently offered and the higher figures the prices at which the garments previously had been offered for sale by the respondents. That the higher prices were the previous prices of the respondents rather than purported current market values is clear from the representations themselves, as well as from the testimony of Alton B. Garrett, Assistant Treasurer of the J. W. Robinson Company. In addition to price comparisons above mentioned, the following are illustrative:

regularly \$89.00, to clear at \$39.00
 regularly \$595.00, reduced to \$350.00
 regularly \$795.00, now just \$595.00
 was \$1395.00, now priced at \$995.00
 originally \$150.00, now \$99.50
 was \$225.00, now \$175.00

Such price comparisons do not mention the time at which the higher prices were in effect as required by Rule 44(b) in these circumstances.

It is further ordered, That paragraphs numbered 2 and 3 of the

conclusions contained in the initial decision be deleted and that the following be substituted therefor:

2. In respondents' advertising, certain of their fur products have been improperly described, in that (a) in some instances, the names of the animals that produced the furs used in the garments advertised have not been disclosed, (b) the term "Mouton-processed Lamb" was used without indicating that the product referred to was made of fur which was dyed, and (c) price comparison representations have omitted reference to the time at which the former higher prices were in effect.

3. The allegations contained in paragraph 6 and 7 of the complaint should be dismissed.

It is further ordered, That the following order be, and it hereby is, substituted for the order contained in the initial decision:

It is ordered, That respondent Associated Dry Goods Corporation, a corporation, and its officers and respondent Rene P. Sommer, as an individual and as an employee 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, offering for sale, 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 or 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. Falsely or deceptively labeling or otherwise identifying any such product as to the name or names of the animal or animals that produced the fur from which such products were manufactured.

2. Failing to affix labels to fur products showing all of the information required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.

3. Setting forth on labels attached to fur products:

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

(b) Required information in handwriting:

(c) Required information in improper sequence.

4. Failing to set forth all of the required information on one side of the labels attached to such products.

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:

1. Fails to disclose:

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

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

2. Compares the prices of fur products with other prices without giving the time at which such other prices were in effect.

It is further ordered. That Paragraphs Six and Seven of the complaint be, and they hereby are, dismissed.

It is further ordered. That the initial decision of the hearing examiner, as modified, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered. That the respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

RADIO CORPORATION OF AMERICA

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

Docket 7676. Complaint, Dec. 3, 1959—Decision, Dec. 15, 1959

Consent order requiring one of the nation's major record manufacturers to cease giving concealed "payola"—sums of money or other valuable consideration—to television and radio disc jockeys or anyone else to induce them to play its recordings.

Mr. John T. Walker and *Mr. James H. Kelley* supporting the complaint.

Cahill, Gordon, Reindel and Ohl by *Mr. Jerrold G. Van Cise* of New York, N.Y., for respondent.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

The Federal Trade Commission issued its complaint against respondent Radio Corporation of America, a corporation, on December 3, 1959 charging it with having violated the provisions of the Federal Trade Commission Act by unfairly paying money or other valuable consideration to induce the playing of phonograph records over radio and television stations in order to enhance the popularity of such records.