IN THE MATTER OF

THE HIGBEE COMPANY

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

Docket 7084. Complaint, Mar. 12, 1958—Decision, June 9, 1959

Order requiring a furrier in Cleveland, Ohio, to cease violating the Fur Products Labeling Act by failing to comply with labeling and invoicing requirements, and by advertising which failed to disclose the names of animals producing the fur in some products or that other products were made of artificially colored or cheap or waste fur, and which contained the name of an animal other than that producing certain furs.

Mr. Alvin D. Edelson supporting the complaint.

Mr. Robert W. Poore, of *Jones, Day, Cockley & Reavis,* of Cleveland, Ohio, for respondent.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

PRELIMINARY STATEMENT

The complaint in this proceeding charges the Higbee Company, a corporation, hereinafter called respondent, with violating the Federal Trade Commission Act, the Fur Products Labeling Act, and the rules and regulations promulgated thereunder, by misbranding, falsely invoicing, and falsely advertising its fur products in the operation of its retail department store in Cleveland, Ohio. After service of the complaint respondent filed an answer denying each of the violations alleged. Hearings have been held at which evidence in support of and in opposition to the complaint was received. Proposed findings of fact, conclusions, and order have been filed by respective counsel. All proposed findings and conclusions not found and concluded herein are rejected.

FINDINGS OF FACT

1. Respondent, the Higbee Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 100 Public Square, Cleveland, Ohio.

2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondent has been and is now engaged in the sale, advertising and offering for sale of fur products at retail in the Cleveland area, which said fur products were 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.

3. The evidence shows and the examiner finds that respondent misbranded certain of its fur products as alleged in paragraph 3 of the complaint 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 in the Rules and Regulations promulgated thereunder. As examples, certain of the labels on fur products did not list the correct animal name as set forth in the Fur Products Name Guide. On one label, the name "Tropical Seal" was listed as the animal producing the fur, whereas it should have been described as "Fur," "Hair," or "Rock Seal" as required by the Name Guide. On another label, the animal producing the fur was listed as "Black Dyed French Lapan," which refers to rabbit and should have been so listed as required in the Name Guide. Another label listed the name "Fur-Dyed Mouton." This is not an animal name but is a process used on lamb. Therefore, the correct animal name was not listed. Still another label listed the animal as "Norwegian Fox." The Name Guide does not contain a designation of fox as "Norwegian Fox." Types of foxes are designated by color in the Name Guide. Other labels listed the animals as "Natural Fox," "Dyed Fox," and "Alaskan Fox." As stated above, types of foxes should be designated by color. Also, some of the labels on fur trimmed garments did not correctly list the name or identification number of the manufacturer of said fur products as required by Section 4(2) (E) of the Act.

4. It is further found that certain of the fur products offered for sale by respondent in its store at Cleveland, Ohio, on January 2 and 3, 1957, and on November 22 and 25, 1957 were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with the rules and regulations promulgated thereunder in the following respects:

(a) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was abbreviated on labels, in violation of Rule 4 of said Rules and Regulations.

(b) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated

thereunder was mingled with nonrequired information on labels, in violation of Rule 29 (a) of said Rules and Regulations.

(c) Information required under Section 4 (2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not completely set out on one side of labels, in violation of Rule 29 (a) of said Rules and Regulations.

(d) Information required under Section 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 said Rules and Regulations.

However, with respect to the allegations contained in subsection (e) of paragraph 4 of the complaint to the effect that respondent violated Rule 36 of the Rules and Regulations promulgated under the Act, it is found that these allegations have not been established by a preponderance of the evidence. The evidence shows that Commission Exhibit No. 1 purports to be a copy of a label which was on a garment at the time of the investigation of respondent's fur products on November 22 and 25, 1957 by Messrs. Brock and Waller. This label was the manufacturer's label and was received in evidence as respondent's Exhibit No. 10. Mr. McManus, respondent's fur buyer testified that, at the time of the investigation of respondent's fur products on November 22 and 25, 1957, the manufacturer's labels which were then attached to the fur products in respondent's fur department were being replaced with respondent's own labels which, in all respects, complied with the provisions of the Act. At one of the hearings Mr. McManus produced the respondent's own label (respondent's Ex. No. 11) which, he testified, he placed on the garment on November 22, 1957, as a replacement for the manufacturer's label (respondent's Ex. No. 10). He placed respondent's label on the garment after Brock and Waller had inspected the garment. Mr. McManus further testified that the fur product from which he had removed this label (respondent's Ex. No. 11) was still in stock in respondent's fur department on the date of the hearing.

5. In this connection, it will be noted that the violations of Section 4 (2) and the Rules and Regulations promulgated thereunder and discussed in paragraphs 3 and 4 hereof, are substantiated by Commission Exhibit Nos. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 17–A, 17–B, 18, 19, 20, 21, 22, 23, 26, 33, 34, 36, and 38, and the testimony of Mr. Brock, Commission attorney-investigator. Counsel for respondent objected to most of these exhibits

on the ground that they are not "primary evidence."[1] Since the investigator's notes were not available, the hearing examiner overruled the objection and received the exhibits in evidence.

6. Paragraph 5 of the complaint alleges that respondent did not invoice certain of its fur products as required by Section 5(b)(1) of the Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder. Mr. Brock, Commission investigator, testified that he examined respondent's copies of sale slips which respondent had previously issued to retail purchasers of its fur products and noted improper description of the animal name in two sale slips which respondent had issued. One of the sale slips, dated September 14, 1957, issued to Mrs. Adrian Parks, listed "Ember Autumn Haze" as the animal description of the fur product. The Fur Products Name Guide contains no such animal description. The other sale slip was issued to Mrs. Monica Histek, dated July 31, 1957, and described the fur product as "Logwood Processed Dyed Mouton Lamb." The Name Guide does not list such an animal description. The term "Mouton" is a process and not an animal description.

7. Counsel for respondent contends that respondent's retail sales of fur products are not subject to the requirements of the Act with respect to invoicing and are not a sufficient basis upon which to issue a cease and desist order, citing *Mandel Bros., Inc.* v. *F.T.C.*, 254 F. 2d 18, 22–23 (1958). In *Federated Department Stores, Inc.*, Docket No. 6836, this examiner followed the decision of the Court of Appeals for the Seventh Circuit in the *Mandel* case and held that the invoicing requirements of the Act are not applicable to the sale of fur products at retail and, therefore, failure of that respondent to issue sale slips in the manner prescribed by the Act to retail purchasers of its fur products was not a violation of the Act. On appeal to the Commission, the Commission reversed the initial decision of the examiner and stated that, since the issues involved in the *Mandel* case are before the Supreme Court for determination by that Court, the Commission felt compelled not to adopt a position inconsistent with that which it had taken on appeal by *certiorari* before the Supreme Court and, therefore, modified the initial decision of the examiner in

[1] Mr. Brock testified that he made copies on his notes of certain labels in respondent's store which he considered to be defective. After completing his investigation at respondent's store on the afternoon of November 25, 1957, he returned to the Federal Trade Commission office in Cleveland and prepared the exhibits (facsimiles of the labels) from his notes. He then destroyed his notes. There is no contention they were wrongfully destroyed.

this respect. In view of the Commission's announced position, this examiner feels compelled to follow the decision of the Commission in the *Federated Department Stores* case. Accordingly, the examiner finds that the allegations in paragraph 5 of the complaint have been established.

8. Paragraph 6 of the complaint alleges that respondent violated Rule 4 of the Rules and Regulations under the Act by setting forth required information under Section 5(b)(1) of the Act in abbreviated form. The evidence substantiating this allegation consists of the testimony of Mr. William P. Bardwell, Commission Investigator and Commission Exhibit No. 41 which purports to be a facsimile of an invoice or retail sale slip issued by respondent in connection with the sale of a muskrat stole. On respondent's retained copy of the sale slip, the muskrat stole was described as "M Rat Stole." Such an abbreviation is a violation of the Act and it is so found.

9. Paragraphs 7 and 8 of the complaint complain of certain newspaper advertisements by respondent of fur products which appeared in the Cleveland Plain Dealer on October 20, 1957, January 13, 1957, and March 3, 1957, and Cleveland Press of August 6, 1954, and December 11, 1956, and which are alleged to be false and deceptive and in violation of the Act. The first advertisement complained about is one which appeared in the Cleveland Plain Dealer of October 20, 1957, (Comm. Ex. No. 51), where respondent advertised wool coats with "fox" collars. The description "fox" collars is not a correct animal name as prescribed in the Fur Products Name Guide. So-called "fox" descriptions should include the color of the fox. There are two advertisements complained about in the Cleveland Plain Dealer of January 13, 1957. The first advertises misses winter coats as "dyed-processed Mouton trimmed styles," (Comm. Ex. No. 52). As stated in paragraph 6 above, "Mouton" is not an animal name designated in the Fur Products Name Guide. Such a description is a violation of the Act. The second advertisement describes fur scarfs as "Martens." (Comm. Ex. No. 53). Such a designation is not listed in the Fur Products Name Guide. It is found, therefore, that respondent violated the provisions of Section 5(a)(1) of the Act.

10. The complaint alleges that the advertisement in the Cleveland Plain Dealer of March 3, 1957, violates several provisions of the Act. The advertisement describes, (Comm. Ex. No. 54), among other articles, "Starlight and Crown Royal Northern

back muskrat Stole,[2] $115." Obviously, this advertisement does not state that the muskrat was dyed. The evidence shows, however, that these muskrat stoles were dyed. Section 5(a)(3) of the Act provides that advertisements of bleached, dyed, or artificially colored fur products shall so state when such is the fact. Accordingly, it is found that respondent violated Section 5(a)(3) of the Act.

11. The complaint also alleges that the advertisement (Comm. Ex. No. 54) violated Section 5(a)(4) of the Act by failing to disclose that the "Starlight" muskrat stoles were composed of bellies. As stated in paragraph 10 above, the advertisement (Comm. Ex. No. 54) described the stoles as "Starlight and Crown Royal Northern back muskrat" * * *. In support of the allegation that the "Starlight" Northern back muskrat stole advertised in the Cleveland Plain Dealer on March 3, 1957, (Comm. Ex. No. 54) was not manufactured from the back of the muskrat but was manufactured from the flank or belly of the dyed muskrat, counsel supporting the complaint offered the testimony of two furriers, Mr. Nate Weinstein and Mr. Robert Sittner, as expert witnesses, each of whom testified that all "Starlight" color muskrat are manufactured from the flank or belly of the muskrat.

12. In its own defense, respondent offered the testimony of Mr. John T. McManus, manager of respondent's Fur Department, trained in fur workrooms and experienced in the fur business since 1938. Mr. McManus testified that "Starlight" muskrat is manufactured from the back of the muskrat and is of a darker color than the flank or belly. Mr. McManus also produced and identified orders which he had placed for the purchase of all muskrat stoles purchased by respondent during the period August 1956 to August 1957. These orders were placed with the Ardley Fur Company of New York, N.Y., who manufactured the stoles described in Commission Exhibit No. 54. Some of the orders refer to "Starlight" garments, such as "Starlight Dyed Northern back Muskrat." Mr. McManus testified that the dyed muskrat stoles which respondent advertised in Commission Exhibit No. 54 and sold under the "Starlight" descriptive color were "Northern back Muskrats." Some of his orders specify "Starlight" muskrat garments and he produced corresponding invoices from

[2] The evidence shows that respondent intended to advertise two colors of Northern back muskrat stoles in this advertisement. The terms "Starlight" and "Crown Royal" refer to the color of the dyed muskrat. The manufacturer of the muskrat stoles advertised in Commission Exhibit No. 54 testified that "Starlight" is a brown shade, a darker brown than "Crown Royal."

the manufacturer. Mr. McManus testified that he was positive they correspond because the respondent's order number appears on the manufacturer's invoice or bill. Mr. McManus further testified that, when he ordered muskrat garments which were to be composed of skin from the flank or belly of the animal, he so specified in the order. As an example, respondent's Exhibit No. 16 is such an order and respondent's Exhibit No. 17 is the invoice from the manufacturer covering such order and the garments are described on the invoice as "Northern Flank Dyed Muskrat Stoles, Special." Mr. McManus testified that "Starlight" and "Autumn Brown" in the fur trade are the same. They denote a primary color. Upon completion of respondent's testimony in its own behalf, counsel supporting the complaint requested an opportunity to present rebuttal testimony from a representative of Ardley Fur Company, New York, N.Y., manufacturer of the muskrat stoles advertised by respondent in Commission Exhibit No. 54 with respect to whether the "Starlight" color stole was manufactured from the back or flank (belly) of the muskrat.

13. Accordingly, such request was granted and a hearing was held in New York at which time Mr. Arthur Blass, owner and proprietor of Ardley Furs, Inc., New York, appeared and testified as a witness on behalf of the Commission. Mr. Blass' testimony will not be recited in detail. Suffice it to say that he manufactured and sold respondent the muskrat stoles described in the advertisement of March 3, 1957 (Comm. Ex. No. 54). Mr. Blass testified on cross-examination that he applied the term "Starlight" in his fur manufacturing business to the back of the muskrat, not the flank or belly. He corroborated the testimony of Mr. McManus that "Starlight" is a brown shade, something like a mink shade of brown, sometimes a little darker, sometimes a little lighter, but a brown shade. Mr. Blass identified respondent's Exhibit Nos. 25 through 29 as being labels or tags prepared in Mr. Blass' own handwriting which he had attached to fur garments which he manufactured and testified that they correctly described the garments to which they were attached as "Northern back Muskrat" and in each case the color is described on the label as "Starlight." Mr. Blass further testified that, neither in 1955, 1956, nor in the first part of 1957, did his company dye muskrat flank garments the "Starlight" color. Mr. Blass further corroborated the testimony of Mr. McManus by testifying that there is not a substantial difference in color between "Autumn Brown" and "Starlight" and that these colors are from the back

of the muskrat. Certainly, as the manufacturer of the stoles described in Commission Exhibit No. 54, Mr. Blass should know whether the "Starlight" muskrat stole which he manufactured is from the back or flank of the muskrat. From the evidence, this examiner finds that the "Starlight" muskrat stole advertised in Commission Exhibit No. 54 was manufactured from the back of the muskrat. Accordingly, it is found that the allegations contained in subparagraph (c) of paragraph 8 of the complaint have not been established.

14. Subsection (d) of paragraph 8 of the complaint alleges that some of respondents newspaper advertisements of fur products were false and deceptive in that said advertisements contained the name of an animal other than the name of the animal that produced the fur, in violation of Section 5(a)(5) of the Act. In support of this allegation, counsel supporting the complaint relies on two newspaper advertisements which were received in evidence without objection, Commission Exhibit Nos. 55 and 56. Commission Exhibit No. 55 is an advertisement placed by the respondent in the December 11, 1956 issue of the Cleveland Press. The advertisement is a one page advertisement, advertising ladies sweaters, dresses, and dyed muskrat coats, jackets, and stoles. Underneath the heading "Dyed Muskrat coats, jackets, stoles," is some advertising copy about coats, jackets, and stoles, which reads as follows: "If you're the mink type (and who isn't) but the budget begs to differ * * * next best to mink, we think, are these minklike muskrats!" Counsel supporting the complaint contends that, since the mink and muskrat are different and distinct animals named in the Name Guide, the use of the phrase "minklike muskrats" in the advertising copy is a violation of Section 5(a)(5) of the Act. The allegations of subsection (d) of paragraph 8 of the complaint have been established.

15. The remaining advertisement complained about is one which appeared in the August 6, 1954 issue of the Cleveland Press which advertised ladies fur trimmed cloth coats, Commission Exhibit No. 56. The contents of this advertisement which counsel supporting the complaint contends violates the Act is the use of the phrase "lynx-dyed white fox" in describing the collar of the coats. Counsel supporting the complaint again urges that, since the Lynx and Fox are two distinct animals described in the Name Guide, the use of the descriptive language "lynx-

dyed white fox" is in violation of the Act. The use of such language is in violation of Section 5(a) (5) of the Act.

16. Counsel for respondent urges that there is no proof that respondent engaged in any transaction in interstate commerce in fur products nor any evidence that respondent ever sold, delivered, or shipped a fur product to a point outside the local Cleveland trading area. Counsel for respondent is correct in this contention. The evidence is undisputed that respondent's business is restricted to retail sales of fur products and there is no evidence of sales or shipments of fur products outside the State of Ohio. However, the evidence shows that respondent has advertised its fur products in two Cleveland newspapers, the *Cleveland Plain Dealer* and the *Cleveland Press.* The *Plain Dealer* has circulation in the States of Pennsylvania, New York, Illinois, Florida, Michigan, California, Arizona, Washington, D.C., and West Virginia. The *Cleveland Press* has circulation in Pennsylvania, Florida, and New York. The evidence shows that the representative out-of-State circulation of the Sunday edition of the *Plain Dealer* is 4,101 copies out of a total of 510,659, and for the *Cleveland Press,* an out-of-State circulation of 828 copies out of a total of 326,558 copies per issue. Counsel for respondent maintains that the interstate portion of the circulation of these newspapers is so small, amounting to 0.8% and 0.25%, respectively, as to be incidental and insignificant. Even though the out-of-State distribution is relatively small compared to their total distribution, nevertheless, there were 4,101 copies of the *Plain Dealer* and 828 copies of the *Cleveland Press* distributed outside the State of Ohio. This constitutes a substantial distribution of the advertisements in commerce, even though, computed on a percentage basis, the percentage of out-of-State distribution to total distribution is somewhat small. In any event, the examiner finds that the out-of-State distribution is sufficient to establish jurisdiction under the Fur Products Labeling Act.

CONCLUSIONS

17. The acts and practices found herein to have been indulged in by respondent are in violation of the Fur Products Labeling Act, the rules and regulations promulgated thereunder and are unfair and deceptive acts and practices in commerce in violation of the Federal Trade Commission Act. Although the evidence establishes and the examiner has found that respondent only violated some of the provisions of the Act, the order to be

entered herein will cover each of the prohibitions contained under the various subsections of the Sections of the Act in view of the decision of the Commission in the *Federated Department Stores* case, which followed the decision of the Commission in the *Mandel* case. The proceeding is in the public interest.

ORDER

It is ordered, That the respondent, the Higbee Company, a corporation, and its officers, and the respondent's 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 of fur products, in commerce, or in connection with the sale, advertising, offering for sale, transportation, or distribution of fur products which have been 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:

(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 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 persons who manufactured such fur product for introduction into commerce, introduced it into commerce, sold it in commerce, advertised or offered it for sale, or transported or distributed it in commerce;

(f) The name of the country of origin of any imported furs used in the fur product.

2. Setting forth on labels attached to fur products:

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

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

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

3. Failing to set forth on labels attached to fur products all of the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations thereunder on one side of such labels.

4. Failing to set forth separately on labels attached to fur products composed of two or more sections containing different animal furs the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations thereunder with respect to each section.

B. Falsely or deceptively invoicing fur products by:

1. Failing to furnish invoices to purchasers of fur products showing:

(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 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 and address of the person issuing such invoice;

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

2. Setting forth on invoices pertaining to fur products information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations thereunder in abbreviated form.

C. 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 the fact;

2. Contains the name or names of any animal or animals other than the name or names provided for in paragraph C–1 (a) hereof.

OPINION OF THE COMMISSION

This matter has come before the Commission in due course under §3.21 of the Commission's Rules of Practice for consideration of an initial decision of the hearing examiner from which no appeal has been taken. It is a case involving alleged misbranding, false invoicing, and false advertising of fur products in violation of the Fur Products Labeling Act.[1]

The Commission is in agreement with the initial decision with two exceptions involving the hearing examiner's conclusion with regard to one aspect of respondent's advertising. Accordingly, the Commission has concluded that the initial decision must be modified as hereinafter indicated.

In paragraph 14 of the initial decision with regard to the use by respondent in one of its advertisements of the term "minklike muskrats," the hearing examiner concluded in this connection that:

* * * Certainly no reader of the advertisement could possibly be misled or deceived. If by the wildest stretch and scope of administrative interpretation the use of the quoted language could be considered a violation of the Act, it is a technical violation at best. It should be treated as *de minimis*. In any event, this examiner finds that the allegations of subsection (d) of Paragraph Eight of the complaint have not been established.

Again, in paragraph 15 of the initial decision, the hearing examiner concludes "that the use of such language ['lynx-dyed white fox'] may be misleading and confusing and finds that same is in violation of Section 5 (a) (5) of the Act."

We are of the opinion that the hearing examiner's references to the likelihood of deception, or lack of it, are themselves misleading and constitute error. Subsection (d) of paragraph 8 of the complaint charges in the words of the Act that respondent falsely and deceptively advertised its fur products through use

[1] 15 U.S.C.A. 69.

of advertisements by including therein the "name of an animal other than the name of the animal that produced the fur."

In a proceeding for violation of the Fur Products Labeling Act, it is not necessary to establish that the acts and practices involved are of a false and misleading character, as is required for violation of Section 5 of the Federal Trade Commission Act.[2] In other words, we are not concerned here with the usual misrepresentation case, that is, with false and misleading advertising which may have the capacity and tendency to deceive in violation of Section 5 of the Federal Trade Commission Act, *supra*. Section 5 of the latter Act is involved only to the extent that it is this section that describes the procedure under which the Commission proceeds by complaint and in the proper case issues its order to cease and desist.[3]

We are solely concerned here with the question of whether respondent has complied with the mandatory requirements of the Fur Products Labeling Act or has engaged in any activity which by that Act is made unlawful. The Fur Products Labeling Act is special legislation dealing with particular problems of a specific industry enacted for the protection of consumers. Its purpose, insofar as the specific problem discussed here—fur product nomenclature—is concerned, was to eliminate the possibility of a seller of fur products representing in any manner that fur products offered by him are composed of any fur, or furs, other than those actually contained in a particular garment. One of the methods employed by the Congress to accomplish this result was to prohibit absolutely the use on labels or in invoices or advertising of the name of any animal other than the name of the animal or animals that produced the fur.

In view of the foregoing considerations, paragraphs 14 and 15 of the initial decision will be modified as indicated and, as so modified, the initial decision will be adopted as the decision of the Commission. An appropriate order will be issued.

FINAL ORDER

It appearing that the hearing examiner filed an initial decision in this proceeding on April 27, 1959, and on May 11, 1959, filed an order amending the initial decision; and

The Commission having concluded, for the reasons stated in

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[2] 15 U.S.C. 45.

[3] See Section 8(a) of the Fur Products Labeling Act, *supra*.

the accompanying opinion, that the initial decision should be modified in certain respects:

It is ordered, That the last thirteen lines of paragraph 14 of the initial decision be deleted and that the following language be substituted therefor:

"The allegations of subsection (d) of paragraph 8 of the complaint have been established."

It is further ordered, That the last sentence of paragraph 15 of the initial decision be modified to read as follows:

"The use of such language is in violation of Section 5(a)(5) of the Act."

It is further ordered, That, as so modified, the initial decision, including the aforesaid order of May 11, 1959, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That respondent, the Higbee Company, shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist contained in the initial decision as modified.