

BEFORE THE UNITED STATES FEDERAL TRADE COMMISSION

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THE HUMANE SOCIETY OF THE UNITED STATES,

Petitioner,

v.

ANDREW & SUZANNE CO. INC. DBA ANDREW MARC,  
BARNEYS NEW YORK, INC., BERGDORF GOODMAN, INC.,  
BLUEFLY, INC., DILLARD'S, INC., FEDERATED DEPARTMENT  
STORES, INC., J.C. PENNEY CORPORATION, INC., LORD & TAYLOR  
LLC, MACY'S, INC., NEIMAN MARCUS GROUP, INC., PHAT FASHIONS  
LLC, ROSS STORES, INC., AND I SPIEWAK & SONS, INC.

Respondents.

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**AMENDED PETITION TO ENJOIN FALSE ADVERTISING AND LABELING OF  
FUR GARMENTS AND TO IMPOSE CIVIL AND CRIMINAL PENALTIES**

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Rebecca G. Judd  
D.C. Bar No. 486315  
Jonathan R. Lovvorn  
D.C. Bar No. 461163  
THE HUMANE SOCIETY OF THE UNITED STATES  
2100 L Street, NW  
Washington, DC 20037  
Telephone: (202) 452-1100  
Facsimile: (202) 778-6132

## **INTRODUCTION**

Pursuant to sections 2.1 and 2.2 of the Federal Trade Commission (“Commission”) regulations, 16 C.F.R. §§ 2.1 and 2.2, Petitioner The Humane Society of the United States (“The HSUS”) hereby petitions the Commission to investigate and commence enforcement action against several retailers and fashion designers that are now or have been engaged in the manufacturing, advertising, selling, and/or labeling of fur-trimmed garments in violation of the federal Fur Products Labeling Act (“FPLA”), 15 U.S.C. § 69 et seq.

As described herein, The HSUS has amassed evidence that several major retailers and fashion designers – including Andrew & Suzanne Co. Inc. DBA Andrew Marc, Barneys New York, Inc., Bergdorf Goodman, Inc., Bluefly, Inc., Dillard’s, Inc., J.C. Penney Corporation, Inc., Lord & Taylor LLC, Macy’s, Inc. (of Federated Department Stores, Inc.), Neiman Marcus Group, Inc., Phat Fashions LLC, Ross Stores, Inc., and I Spiewak & Sons, Inc. (collectively “Respondents”) – are now or have been engaged in the manufacturing or selling of fur garments that are falsely or misleadingly advertised and/or labeled as either faux fur, genuine raccoon or coyote, or rabbit fur when, in fact, the garments include fur from members of the canine family, such as domestic dog, wolf, or raccoon dog.

Accordingly, The HSUS respectfully requests that the Commission take prompt action against the Respondents, including, as appropriate, seizure of falsely or deceptively advertised or labeled garments, the initiation of proceedings for injunctive relief, and the imposition of monetary penalties, which can range up to \$5,000 per violation under sections 8, 9, and 11 of the FPLA. 15 U.S.C. §§ 69f, 69g, and 69i.

## **FACTUAL BACKGROUND**

### **A. The Parties**

#### 1. The HSUS

The HSUS is the nation's largest animal protection organization with nearly ten million members and constituents. The HSUS is based in Washington, DC, and works to protect all animals through education, investigation, litigation, legislation, advocacy, and field work. Because more than fifty million fur-bearing animals are killed annually, and often inhumanely, for the purpose of obtaining their pelts for coats, The HSUS's Fur-Free Campaign works to end the killing of animals for fur and fur trim, including by promoting faux fur as a humane alternative to the use of genuine fur pelts on garments. The false and deceptive advertising and labeling described herein injures HSUS and its members by misleading humane consumers into buying real fur products and increasing consumer confusion over the origin and humaneness of garments sold at retail, thereby hampering The HSUS's organizational mission.

#### 2. Andrew & Suzanne Co. Inc. DBA Andrew Marc

Andrew & Suzanne Co. Inc., doing business as Andrew Marc ("Andrew Marc"), is an American design company that designs, manufactures, and distributes upscale clothing and watches under the brand names Andrew Marc and Marc New York. Its corporate headquarters are located at 570 Seventh Avenue, Floor 2, New York, NY 10018.

#### 3. Barneys New York, Inc.

Barneys New York, Inc. ("Barneys") is a luxury retail store operating ten flagship stores, fourteen co-op stores, and thirteen outlet stores nationwide. Its corporate

headquarters are located at 575 Fifth Avenue, New York, NY 10017.

4. Bergdorf Goodman, Inc.

Bergdorf Goodman, Inc. (“Bergdorf Goodman”) is an upscale, specialty retail department store under the Neiman Marcus Group, Inc. Bergdorf Goodman operates two stores in Manhattan that offer a variety of luxury goods and services, an online store at [www.bergdorfgoodman.com](http://www.bergdorfgoodman.com), and a print catalog. Its corporate headquarters are located at 754 Fifth Avenue, New York, NY 10019.

5. Bluefly, Inc.

Bluefly, Inc. (“Bluefly”) is an online fashion retailer distributing styles from over 350 designers on its website, [www.bluefly.com](http://www.bluefly.com). Its headquarters are located at 42 West 39th Street, New York, NY 10018.

6. Dillard’s, Inc.

Dillard’s, Inc. (“Dillard’s”) is one of the largest fashion apparel and home furnishings retailer in the nation. Dillard’s offers a mix of name brand and private label merchandise, including house brand Preston & York. It operates 330 stores in twenty-nine states and an online store at [www.dillards.com](http://www.dillards.com). Its corporate headquarters are located at 1600 Cantrell Road, Little Rock, AR 72201.

7. J.C. Penney Corporation, Inc.

J.C. Penney Corporation, Inc. (“J.C. Penney”), the wholly owned operating subsidiary of J.C. Penney Company, Inc., is one of America’s largest department store, catalog, and e-commerce retailers and operates 1,037 department stores throughout the United States and Puerto Rico. Approximately forty percent of J.C. Penney’s merchandise is private label and includes exclusive brands such as a.n.a. and St. John’s Bay. J.C.

Penney is headquartered at 6501 Legacy Drive, Plano, TX 75024.

8. Lord & Taylor LLC

Lord & Taylor LLC (“Lord & Taylor”) is a department store retailer that operates forty-eight stores in ten states and the District of Columbia and an online store at lordandtaylor.com. Its corporate headquarters are located at 424 Fifth Avenue, New York, NY 10018.

9. Macy’s, Inc.

Macy’s, Inc. (“Macy’s”), the largest retail brand of Federated Department Stores, Inc., is a national department store retail chain with more than 800 locations in forty-five states, the District of Columbia, Puerto Rico, and Guam. Macy’s stores are operated by seven regionally based retail divisions – Macy’s East, Macy’s Florida, Macy’s Midwest, Macy’s North, Macy’s Northwest, Macy’s South, and Macy’s West – and an online store at www.macys.com. Macy’s is headquartered at 7 West Seventh Street, Cincinnati, OH 45202.

10. Neiman Marcus Group, Inc.

Neiman Marcus Stores (“Neiman Marcus”), a premier luxury retailer with thirty-seven stores nationwide, is the largest subsidiary of Neiman Marcus Group, Inc. Its corporate headquarters can be found at 1 Marcus Square, 1618 Main Street, Dallas, TX 75201. The company also includes Neiman Marcus Direct, which operates both a print catalog and an online store located at www.neimanmarcus.com.

11. Phat Fashions LLC

Phat Fashions LLC is a clothing manufacturer that designs and retails urban fashions under the Phat Farm and Baby Phat brand names. Its goods are sold at

department and specialty stores, two company-owned Phat Farm stores in New York and Montreal, and a website. The clothier's headquarters are located at 512 Seventh Avenue, 43rd Floor, New York, NY 10010.

12. Ross Stores, Inc.

Ross Stores, Inc. ("Ross") is the nation's second largest discount retailer that offers name brand and designer apparel, accessories, footwear, and home fashions. Ross has 714 stores in twenty-six states and Guam and operates an online store at [www.rossstores.com](http://www.rossstores.com). It is headquartered at 4440 Rosewood Drive, Pleasanton, CA 94588.

13. I Spiewak & Sons, Inc.

I Spiewak & Sons, Inc. ("Spiewak") is a garment designer that designs and retails under the brand name Spiewak Uniform Workwear. Its clothes are sold in department stores worldwide, as well as various online retailers. Its corporate headquarters are located at 469 Seventh Avenue, 10th Floor, New York, NY 10018.

**B. The Chinese Fur Trade and Its Use of Domestic Dogs and Raccoon Dogs**

Due to the lack of animal welfare protection and a surplus of cheap labor, China has become the leading pelt producer and manufacturer of fur garments in the world. Mark Rissi *et al.*, FUN FUR? A REPORT ON THE CHINESE FUR INDUSTRY 2-4 (2005), available at <http://www.careforthewild.com/files/furreport05.pdf> (Attachment 1). Roughly half of all fur garments entering the United States come from China, where a large number of dogs, cats, raccoon dogs, and other domestic and wild species fall victim to inhumane and unacceptable conditions each year. Id. at 5.

A 2004-2005 investigation conducted by Swiss Animal Protection SAP, Care for the Wild International, and EAST International documented the horrifying conditions of

Chinese fur farms. Id. at 5-11. The report states that animals are frequently housed in small mesh cages, where they exhibit pathological behaviors, including self-mutilation and infanticide. Id. at 5-7. The report further notes that in preparation for skinning, fur farm animals are removed from their cages with a capture pole and are either swung head-first into the ground or are repeatedly beaten with a metal or wooden stick so they are stunned or immobilized. Id. at 6. However, according to the report, a significant number of the animals remain fully conscious while they are skinned alive. Id. at 9. The report notes that, in several cases, after the skin was removed, breathing, eyelid movements, and heartbeat were apparent for up to five to ten minutes. Id.

It is estimated that there are 1.5 million raccoon dogs in China being raised for their fur.<sup>1</sup> Id. at 3. Raccoon dogs are a member of the dog family whose fur resembles raccoon, even though raccoon is an entirely different species. The raccoon dog's scientific name is *Nyctereutes procyonoides* and is taxonomically classified under the Family Canidae. University of Michigan Museum of Zoology, Animal Diversity Web, at [http://animaldiversity.ummz.umich.edu/site/accounts/information/Nyctereutes\\_procyonoides.html](http://animaldiversity.ummz.umich.edu/site/accounts/information/Nyctereutes_procyonoides.html) (last visited Mar. 9, 2007). Raccoon dogs are native to eastern Siberia, North Vietnam, Korea, Japan, and China, and are about the size of a fox. Id.

In addition to reports of the inhumane treatment of raccoon dogs in China, a 1997-1998 investigation conducted by The HSUS also documented the often inhumane killing of two million domestic dogs and cats for their fur, including the live skinning of animals. The HSUS, *WHAT IS THAT THEY'RE WEARING?* (1998) (Attachment 2). As a result of this

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<sup>1</sup> The FPLA's Name Guide requires raccoon dog fur products to be labeled as "Asiatic Raccoon." 16 C.F.R. § 301.0. However, HSUS investigators posing as American buyers "were told by a middleman in the Chinese fur trade that any label could be put in any garment or fur product, depending on the preference of the buyer." The HSUS, *WHAT IS THAT THEY'RE WEARING?* 4 (1998) (Attachment 2).

investigation, Congress enacted the Dog and Cat Protection Act of 2000, 19 U.S.C. § 1308, which was intended to prohibit the trade in domestic dog and cat fur. However, some garments derived from domestic dog fur continue to enter the United States because of widespread problems with mislabeling of fur garments in the fashion industry.

**C. Respondents' False and Misleading Advertising and Labeling of Fur Products**

For the past two years, The HSUS has investigated numerous retailers and designers that are or have been manufacturing and/or selling deceptively advertised and/or labeled fur-trimmed garments. Over the last several months, The HSUS determined that the practice had become widespread in the industry, as an abundance of garments made from domestic dog, wolf, or raccoon dog were being falsely advertised as “faux fur” or genuine rabbit or raccoon fur, mislabeled as genuine raccoon or coyote fur, or simply not labeled at all.

1. Advertising and Sale of Real Fur as Faux Fur

Investigators for The HSUS have purchased several garments advertised as “faux fur” from major retailers that are, in fact, real fur.

a. *Bluefly and Andrew Marc*

In January 2007, the online retailer Bluefly.com advertised a Marc New York brand jacket as having a “faux fur trimmed hood.” See Bluefly’s Online Advertisement of Marc New York Jacket (Attachment 3); see also Photograph of Bluefly’s Marc New York Jacket (Attachment 4). Upon purchase on January 5, 2007, it was discovered that none of the garment’s labels identified the name of the animal that produced the fur, see Photographs of Bluefly’s Marc New York Jacket Labels (Attachments 5, 6, and 7), even though mass spectrometry tests commissioned by The HSUS subsequently reported on January 24, 2007



that this jacket, unlabeled and advertised as faux fur, tested positive for domestic dog fur. See Gene-Facts' Analysis of Sample #20 (Attachment 8).

b. *Macy's*

In December 2006, Macy's website advertised a Sean John<sup>2</sup> coat as having an "imitation rabbit fur collar" and materials made of "Nylon/faux fur/goose down." See Macy's Online Advertisement of Sean John Jacket (Attachment 9). However, after an HSUS investigator purchased the coat online at Macys.com on December 12, 2006, it was discovered that the label read "Hood Trim: Genuine Raccoon Fur." See Photographs of Macy's Sean John Jacket (Attachments 10 and 11). On December 19, 2006, mass spectrometry testing commissioned by The HSUS reported that this garment, advertised as faux fur but labeled as genuine raccoon, was actually trimmed with the wholly distinct species of raccoon dog. See Gene-Facts' Analysis of Sample #7 (Attachment 12).

2. False Advertising and Labeling of Canine Fur as Rabbit or Raccoon.

In addition to finding real fur garments falsely advertised as faux fur, HSUS investigators also discovered that numerous retailers and designers were falsely advertising and/or labeling fur-trimmed garments as genuine rabbit or raccoon, even though the fur was derived from various members of the canine family.

a. *Baby Phat*

During December 2006, Burlington Coat Factory<sup>3</sup> sold fur-trimmed Baby Phat jackets labeled as either genuine raccoon or coyote fur. On December 5 and 6, 2006, individuals residing in at least four states and the District of Columbia purchased these

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<sup>2</sup> Sean John is not a named Respondent in this Petition because Sean John has agreed to take remedial measures to address the labeling and advertising problems described herein.

<sup>3</sup> Burlington Coat Factory is not a named Respondent in this Petition because Burlington Coat Factory has agreed to take remedial measures to address the labeling and advertising problems described herein.

jackets and discovered that the labels read “Trim: Genuine Coyote Fur of China Origin” or “Trim: Raccoon [sic] Fur of China Origin.” See Photographs of Baby Phat Jackets and Labels (Attachments 13-23). On December 19, 2006, mass spectrometry analysis reported that the Baby Phat garments, labeled as either genuine raccoon or coyote fur, tested positive for raccoon dog fur. See Gene-Facts’ Analysis of Samples #2, #4, and #6 (Attachments 24, 25, and 26).

b. *Barneys and Spiewak*

In January 2007, the retail store Barneys advertised a Spiewak brand jacket as having a “fur trimmed hood” on its online website, [www.barneys.com](http://www.barneys.com). See Barneys’ Online Advertisement of Spiewak Jacket (Attachment 27). After purchasing the item on January 5, 2007, HSUS investigators discovered that internal labels read “Hood Trim: 100% Fur,” and an external tag read “Hood trimmed with Genuine Fur Ruff Coyote.” See Photograph of Barneys’ Spiewak Jacket (Attachment 28); see also Photographs of Spiewak Jacket’s Labels (Attachments 29, 30, and 31). On January 24, 2007, mass spectrometry results commissioned by The HSUS reported that this jacket, advertised simply as “fur” and labeled as genuine coyote fur, was actually derived from wolf. See Gene-Facts’ Analysis of Sample #17 (Attachment 32).

c. *Bergdorf Goodman*

On January 5, 2007, HSUS investigators purchased a Bogner<sup>4</sup> brand jacket advertised as having a “detachable rabbit fur hood” from retailer Bergdorf Goodman’s online website, [www.bergdorfgoodman.com](http://www.bergdorfgoodman.com). See Bergdorf Goodman’s Online

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<sup>4</sup> Bogner is not a named Respondent in this Petition because Bogner labeled its garment as “Asian Raccoon,” which, although not in strict compliance with the FPLA, is comparable to the “Asiatic Raccoon” label required pursuant to the FPLA Name Guide, 16 C.F.R. § 301.0.

Advertisement of Bogner Jacket (Attachment 33); see also Photographs of Bergdorf Goodman's Bogner Jacket and Labels (Attachments 34, 35, and 36). However, upon mass spectrometry analysis, it was discovered that the fur-trimmed garment, advertised as rabbit fur, tested positive for raccoon dog fur. See Gene-Facts' Analysis of Sample #21 (Attachment 37).

d. *Dillard's*

On January 5, 2007, HSUS investigators purchased a MICHAEL Michael Kors<sup>5</sup> brand jacket from retailer Dillard's online website that was advertised as having a "detachable raccoon-trimmed hood." See Dillard's Advertisement of Michael Kors Jacket (Attachment 38); see also Photograph of Dillard's Michael Kors Jacket (Attachment 39). However, on January 24, 2007, mass spectrometry analysis reported that the garment's fur trim, advertised as genuine raccoon, was derived from the wholly distinct species of raccoon dog. See Gene-Facts' Analysis of Sample #25 (Attachment 43).

Additionally, in January 2007, The HSUS received a complaint from a consumer that purchased a Dillard's house brand Preston & York fur-trimmed garment from a Dillard's department store in Texas, advertised in the local newspaper as having a genuine raccoon collar. See Declaration of Deborah McMillan ¶¶ 2-3 (Attachment 44); see also Newspaper Advertisement of Dillard's Jacket (Attachments A and B). The garment's label also stated "Made in China" and "Trim: Genuine Raccoon Fur." See Photographs of Dillard's Preston & York Jacket and Labels (Attachments C, D, and E). However, upon reading a news story detailing how J.C. Penney was selling similar fur-trimmed garments

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<sup>5</sup> As a result of agreeing to take remedial measures to address the labeling and advertising problems described herein, Michael Kors has been withdrawn as a Respondent.

falsely labeled as genuine raccoon when, in fact, the fur was derived from raccoon dogs, the consumer submitted her Dillard's garment to The HSUS for mass spectrometry testing. McMillan Decl. ¶¶ 5-8. On February 4, 2007, mass spectrometry testing commissioned by The HSUS reported that this fur-trimmed garment, advertised and labeled as genuine raccoon, was made from raccoon dog fur. See Gene-Facts' Analysis of Sample #26 (Attachment 45).

e. *J.C. Penney*

Investigators for The HSUS were alerted in 2006 that J.C. Penney was selling fur-trimmed garments that resembled raccoon dog. On October 26, 2006, a J.C. Penney house brand a.n.a. jacket, labeled as "Fur Trim: Raccoon Strips" and "Fur Origin: China," was purchased from a J.C. Penney department store in Maryland. See Photographs of J.C. Penney a.n.a. Jacket and Labels (Attachments 51, 52, 53, and 54). This garment was subjected to mass spectrometry testing, and on December 19, 2006, results reported that the J.C. Penney a.n.a. brand fur-trimmed garment, labeled as genuine raccoon fur, was derived from raccoon dog. See Gene-Facts' Analysis of Sample #3 (Attachment 55). Once J.C. Penney was made aware of these results through media articles, J.C. Penney compounded its legal violations by instructing employees to alter garment labels on a.n.a. and St. John's Bay house brand fur-trimmed garments so that no information about the name of the animal that produced the fur was visible to shoppers and consumers. David Koenig, Associated Press, *JCPenney Puts Canine-Fur Coats Back on Racks*, THE COLUMBIA DISPATCH, Jan. 13, 2007 (Attachment 56); see also Photograph of J.C. Penney St. John's Bay Jacket's Altered Label (Attachment 57).

f. *Lord & Taylor*

On January 5, 2007, HSUS investigators purchased a DKNY<sup>6</sup> brand jacket from a Lord & Taylor department store in Maryland that was labeled as “Fur Trim: Raccoon.” See Photographs of Lord & Taylor’s DKNY Jacket and Labels (Attachments 58, 59, 60, and 61). However, mass spectrometry tests reported that the fur, labeled as genuine raccoon, tested positive as raccoon dog. See Gene-Facts’ Analysis of Sample #16 (Attachment 62).

g. *Neiman Marcus and Andrew Marc*

On January 5, 2007, an Andrew Marc brand fur-trimmed jacket was purchased from retailer Neiman Marcus’ online website that was advertised as having a “Chinese raccoon fur hood.” See Neiman Marcus’ Online Advertisement of Andrew Marc Jacket (Attachment 63). The label also stated the garment was made from genuine raccoon and rabbit, stating “Trim: Natural Raccoon Fur 100%” and “Trim: Natural Rabbit Fur 100%.” See Photographs of Neiman Marcus’ Andrew Marc Jacket and Labels (Attachments 64, 65, 66, 67, and 68). However, on January 24, 2007, mass spectrometry results reported that this fur-trimmed garment, advertised and labeled as genuine raccoon, was derived from raccoon dog fur. See Gene-Facts’ Analysis of Sample #22 (Attachment 69).

h. *Ross*

On December 11, 2006, HSUS investigators purchased a Calvin Klein<sup>7</sup> brand fur-trimmed jacket from a Ross department store in Maryland. See Photograph of Ross’ Calvin Klein Jacket (Attachment 70). Although the fur trim resembled raccoon dog, the

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<sup>6</sup> DKNY is not a named Respondent in this Petition because DKNY has agreed to take remedial measures to address the labeling and advertising problems described herein.

<sup>7</sup> Calvin Klein is not a named Respondent in this Petition because Calvin Klein has agreed to take remedial measures to address the labeling and advertising problems described herein.

jacket was labeled “Real Fur trim: Canis Latranis.”<sup>8</sup> See Photograph of Ross’ Calvin Klein Jacket Labels (Attachments 71 and 72). However, on January 9, 2007, mass spectrometry results reported that this fur-trimmed garment, labeled as coyote, was derived from raccoon dog fur. See Gene-Facts’ Analysis of Sample #15 (Attachment 73).

**C. Summary of False and Misleading Advertising and Labeling of Fur Products**

As described above, deceptive advertising and labeling of fur-trimmed garments is a pervasive problem in the clothing design and retail industry. Below is a table that summarizes the aforementioned evidence and test results.

<b>Table 1. Summary of Investigation and Mass Spectrometry Results</b>				
<b>Retailer</b>	<b>Brand</b>	<b>Advertised</b>	<b>Labeled</b>	<b>Tested</b>
Barneys	Spiewak	Fur Trimmed Hood	Hood Trim: 100% Fur and Genuine Fur Ruff Coyote	Wolf
Bergdorf Goodman	Bogner*	Detachable Rabbit Fur Hood	Asian Raccoon	Raccoon Dog
Bluefly	Andrew Marc	Faux Fur Trimmed Hood	---	Domestic Dog
Burlington Coat Factory*	Baby Phat	With Faux Fur Trim	Trim: Raccoon Fur of China Origin	Raccoon Dog
Burlington Coat Factory*	Baby Phat	---	Trim: Genuine Coyote Fur of China Origin	Raccoon Dog
Dillard’s	Michael Kors*	Raccoon-Trimmed Hood	Fur Trim: Raccoon	Raccoon Dog

<sup>8</sup> *Canis latrans* is the scientific name for coyote.

Dillard's	Preston & York	Raccoon Collar	Trim: Genuine Raccoon Fur Trim	Raccoon Dog
J.C. Penney	a.n.a.	---	Fur Trim: Raccoon Strips	Raccoon Dog
J.C. Penney	St. John's Bay	---	<b>Marked Out</b>	---
Lord & Taylor	DKNY*	---	Fur Trim: Raccoon	Raccoon Dog
Macy's	Sean John*	Imitation Rabbit Fur Collar and Faux Fur	Hood Trim: Genuine Raccoon Fur	Raccoon Dog
Neiman Marcus	Andrew Marc	Chinese Raccoon Fur Hood	Trim: Natural Raccoon Fur 100%	Raccoon Dog
Ross	Calvin Klein*	---	Real Fur Trim: Canis Latranis	Raccoon Dog
<b>*Not named as a Respondent in this Petition</b>				

**VIOLATIONS OF THE FEDERAL FUR PRODUCTS LABELING ACT**

**A. False or Deceptive Advertising Under Sections 3(a) and 5(a) of the FPLA**

The false or deceptive advertising of fur garments as “faux fur” or as genuine raccoon or rabbit fur when they are, in fact, derived from domestic dog or raccoon dog constitutes a clear violation of the FPLA. Pursuant to section 3(a) of the FPLA, “[t]he introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product which is misbranded *or falsely or deceptively advertised . . . is unlawful* and shall be an unfair method of competition, and an unfair or deceptive act or practice, in

commerce under the Federal Trade Commission Act (15 U.S.C. 41 et seq).” 15 U.S.C. § 69a(a) (emphasis added).

Under section 5(a) of the FPLA, the FPLA provides that “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 . . . of the animal or animals that produced the fur . . .;” “(5) . . . contains any form of misrepresentation or deception, indirectly or by implication, with respect to such fur product or fur;” or “(6) does not show the name of the country or origin of any imported furs or those contained in a fur product.” Id. § 69c(a).

Here, Bluefly and Macy’s advertised their respective Andrew Marc and Sean John<sup>9</sup> garments as “faux fur” on their websites, rather than correctly advertising the fur-trimmed garments as domestic dog or raccoon dog, which are “the name or names . . . of the animal or animals that produced the fur.”<sup>10</sup> Id. § 69c(a)(1). As a result, such advertising constitutes a “form of misrepresentation or deception,” id. § 69c(a)(5), and these retailers’ garments “shall be considered to be falsely or deceptively advertised” in violation of the FPLA, id. § 69c(a).

In addition, Barneys, Bergdorf Goodman, Dillard’s, and Neiman Marcus advertised their respective Spiewak, Bogner,<sup>11</sup> Michael Kors,<sup>12</sup> Preston & York, and Andrew Marc

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<sup>9</sup> As discussed above, Sean John is not a named Respondent in this Petition.

<sup>10</sup> Bluefly and Andrew Marc apparently also violated the Dog and Cat Protection Act of 2000, which prohibits any domestic dog or cat fur product from being imported, manufactured, sold, or advertised in the United States, and which itself provides for civil and criminal penalties, as well as other forms of relief. 19 U.S.C. § 1308.

<sup>11</sup> As discussed above, Bogner is not a named Respondent in this Petition.

<sup>12</sup> As discussed above, Michael Kors has been withdrawn as a Respondent.



fur-trimmed garments as genuine coyote, genuine rabbit, genuine raccoon, or Chinese raccoon fur or just simply “fur,” rather than correctly advertising those garments as wolf fur or raccoon dog fur, which are “the name or names . . . of the animal or animals that produced the fur.” Id. § 69c(a)(1). As a result, such advertising constitutes a “form of misrepresentation or deception,” id. § 69c(a)(5), and these retailers’ garments “shall be considered to be falsely or deceptively advertised” in violation of the FPLA, id. § 69c(a).

These violations of sections 3(a) and 5(a) of the FPLA are clear and unequivocal and warrant immediate enforcement action by the Commission. See, e.g., Mannis v. F.T.C., 293 F.2d 774, 777 (9th Cir. 1961) (affirming Commission’s finding that fur seller committed false advertising, stating that “[t]he purpose of the [FPLA] is the protection of consumers against false advertising” and the “[FPLA] places an affirmative burden on a fur seller to state the truth respecting his furs offered for sale”); Hoving Corp. v. F.T.C., 290 F.2d 803 (2d Cir. 1961) (affirming Commission’s cease and desist order, which found that fur seller had violated the FPLA by misbranding, falsely and deceptively invoicing, and falsely and deceptively advertising its fur products); Morton’s Inc. v. F.T.C., 286 F.2d 158 (1st Cir. 1961) (affirming Commission’s cease and desist order with respect to FPLA violations concerning false and deceptive advertising); De Gorter v. F.T.C., 244 F.2d 270 (9th Cir. 1957) (affirming Commission’s cease and desist order because evidence sustained Commission’s finding that fur sellers misbranded, falsely and deceptively invoiced, and falsely and deceptively advertised fur products in violation of FPLA).

**B. False or Deceptive Labeling Under Sections 3(a) and 4 of the FPLA**

The false or deceptive labeling of fur-trimmed garments as genuine raccoon or coyote fur when the fur is actually derived from another animal also constitutes a clear

violation of the FPLA. Pursuant to section 3(a) of the FPLA, “[t]he introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product which is *misbranded* or falsely or deceptively advertised . . . *is unlawful* and shall be an unfair method of competition, and an unfair or deceptive act or practice, in commerce under the Federal Trade Commission Act (15 U.S.C. 41 et seq).” 15 U.S.C. § 69a(a) (emphasis added). Section 4 of the FPLA further provides that “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;
- (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 69e(c) of this title;
  - (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;

*(3) if the label required by paragraph (2)(A) of this section sets forth the name or names of any animal or animals other than the name or names provided for in such paragraph.”*

Id. § 69b (emphasis added).

In this case, because Barneys, Spiewak, Phat Fashions, Dillard’s, J.C. Penney, Lord & Taylor, Macy’s, Neiman Marcus, and Ross are or have been manufacturing and/or selling garments mislabeled as either genuine coyote or genuine raccoon fur, rather than the wholly distinct species of wolf or raccoon dog from which the fur is actually derived, such garments “shall be considered to be misbranded” in violation of the FPLA. Id. These garments are “falsely or deceptively labeled or otherwise falsely or deceptively identified,” id. § 69b(1), and “set[] forth the name . . . of [an] animal other than the name [“Asiatic Raccoon” or “Wolf”] . . . provided for in [the FPLA Name Guide, 16 C.F.R. § 301.0],” id. § 69b(3).

In addition, because Bluefly and Andrew Marc are or have been manufacturing and/or selling unlabeled garments, even though these garments are derived from domestic dog and raccoon dog fur, those products “shall [also] be considered to be misbranded” in violation of the FPLA, because “there is not affixed to the fur product a label showing in words and figure plainly legible” the information required in section 4 of the FPLA, such as “the name or names (as set forth in the Fur Products Name Guide) of the animal or

animals that produced the fur,” whether the fur is used, bleached, artificially colored, or comprised of waste parts, the identification number of the manufacturer, and the country of origin of the imported fur.<sup>13</sup> Id. § 69b(2).

These violations of sections 3(a) and 4 of the FPLA are clear and unequivocal and warrant immediate enforcement action by the Commission. See, e.g., F.T.C. v. Mandel Brothers, Inc., 359 U.S. 385 (1959) (affirming that the Federal Trade Commission did not abuse its discretion in issuing its cease-and-desist order prohibiting retail department store from selling fur garments in violation of three of the FPLA’s labeling disclosure requirements); Hoving, 290 F.2d 803; De Gorter, 244 F.2d 270.

**C. Unlawful Alteration of Labels Under Sections 3(d) and 4(2)(A) of the FPLA**

J.C. Penney’s alteration of misbranded labels on their a.n.a. and St. John’s Bay house brand garments also constitutes a violation of the FPLA. Pursuant to section 4(2)(A) of the FPLA, a fur product “shall be considered to be misbranded” if it is not “plainly legible the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur.” 15 U.S.C. § 69b(2)(A). Because the name of the animal that produced the fur for the J.C. Penney garments is no longer visible to J.C. Penney shoppers and consumers, such fur products “shall be considered to be misbranded” in

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<sup>13</sup> The garments in question are not exempt from the requirements of the FPLA pursuant to 16 C.F.R. § 301.39(a), which generally exempts fur products if the value of the fur trim on the garments does not exceed \$150, because this exemption “shall not be applicable: (1) *to any dog or cat fur product*; (2) *if any false, deceptive or misleading representations as to the fur contained in the fur product are made*; or (3) *if any representations as to the fur are made in labeling, invoicing or advertising without disclosing: (i) in the case of labels, the information required to be disclosed under section 4(2) (A), (C), and (D) of the Act.*” 16 C.F.R. § 301.39(a) (emphasis added). Because Andrew Marc and Bluefly manufactured, distributed, and sold an unlabeled Marc New York brand fur-trimmed garment that is derived from domestic dog, Bluefly and Andrew Marc cannot claim the labeling exemption. Id. § 301.39(a)(1).

violation of the FPLA.<sup>14</sup> Id. § 69b.

In addition, section 3(d) of the FPLA provides:

[I]t shall be unlawful to remove or *mutilate*, or cause or participate in the removal or mutilation of, *prior to the time any fur product is sold and delivered to the ultimate consumer, any label required by this subchapter to be affixed to such fur product*, and any person violating this subsection is guilty of an unfair method of competition, and an unfair or deceptive act or practice, in commerce under the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

Id. § 69a(d) (emphasis added). Accordingly, J.C. Penney's decision to mutilate labels only compounded the retailer's already significant violations of the FPLA.

### **RELIEF REQUESTED**

The actions described above constitute unlawful conduct, unfair methods of competition, and unfair and deceptive practices under the Federal Trade Commission Act, 15 U.S.C. § 41 et seq. Id. § 69a. Pursuant to section 8 of the Fur Products Labeling Act, the Commission is empowered to enforce the Act and prohibit any such person from violating the Act. Id. § 69f. Accordingly, The HSUS respectfully requests that the Commission take prompt action against the Respondents, including, as appropriate, seizure of false or deceptively advertised or labeled garments, the initiation of proceedings for injunctive relief, and the imposition of monetary penalties, which can range up to \$5,000

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<sup>14</sup> Here again, because J.C. Penney's garments are deceptively labeled and misbranded as "Raccoon Strips" or "Finn Raccoon," when in fact, the fur is derived from raccoon dog (which is required to be labeled as "Asiatic Raccoon" under the FPLA Name Guide, 16 C.F.R. § 301.0), the garments in question are not exempt from the requirements of the FPLA pursuant to 16 C.F.R. § 301.39(a), which generally exempts fur products if the value of the fur trim on the garments does not exceed \$150. Moreover, even after J.C. Penney redacted misbranded lines of the labels, some representations as to the fur remained in the labeling, such as the country of origin of the imported fur and the registered number of the product manufacturer, distributor, or seller. Because the labels no longer disclosed the name of the animal that produced the fur, as required under section 4(2)(A) of the Act, 15 U.S.C. § 69b(2)(A), this is yet another reason why the exemption is inapplicable.

per violation under sections 8, 9, and 11 of the FPLA. Id. §§ 69f, 69g, and 69i.

Respectfully submitted,



*Rebecca G. Judd*

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Rebecca G. Judd  
D.C. Bar No. 486315  
Jonathan R. Lovvorn  
D.C. Bar No. 461163  
The Humane Society of the United States  
2100 L Street, NW  
Washington, DC 20037  
(202) 452-1100

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