

BEFORE THE UNITED STATES FEDERAL TRADE COMMISSION

THE HUMANE SOCIETY OF THE UNITED STATES,

Petitioner,

v.

ANDREW & SUZANNE CO. INC. DBA ANDREW MARC,
BLOOMINGDALE'S, INC., BLUEFLY, INC., CACHÉ, INC.,
DILLARD'S, INC., DR. JAYS, INC., ELUXURY.COM, INC.,
LORD & TAYLOR, LLC, NEIMAN MARCUS GROUP, INC.,
PASHA & JO, RAMOSPORT, SAKS INCORPORATED,
SEARS, ROEBUCK AND CO., AND YOOX S.P.A.

Respondents.

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

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 (“FTC” or “Commission”) regulations, 16 C.F.R §§ 2.1 and 2.2, Petitioner The Humane Society of the United States (“The HSUS”) hereby submits this Supplemental Petition to the FTC to investigate and commence enforcement action against several retailers and fashion designers that have or continue to manufacture and sell fur-trimmed garments that are falsely labeled or advertised in violation of the federal Fur Products Labeling Act (“FPLA”), 15 U.S.C. § 69 *et seq.*

Between Fall 2005 and Spring 2007, The HSUS identified over twenty-five fur-trimmed garments that were falsely advertised or mislabeled as faux fur or genuine raccoon or coyote fur, when in fact, they were derived from members of the canine family, such as raccoon dog, domestic dog, or wolf. As a result of such widespread deceptive advertising and labeling of fur-trimmed garments, a practice that clearly violates the FPLA, on March 13, 2007, The HSUS submitted to the FTC a Petition To Enjoin False Advertising And Labeling Of Fur Garments And To Impose Civil And Criminal Penalties (“March 13, 2007 Petition”) against fourteen named retailers and designers.¹ *See* March 13, 2007 Petition (Exh. 1). However, although The HSUS received a May 8, 2007 letter from the FTC acknowledging receipt of The HSUS’s Petition, it remains unclear what action FTC is taking to combat the industry-wide problem of false advertising and labeling of fur garments. *See* May 8, 2007 Letter (Exh. 2).

Moreover, a similar investigation conducted during the recent 2007-2008 winter season revealed that this widespread consumer deception is ongoing and even expanding within the clothing industry. The HSUS has amassed further evidence that several major retailers and fashion designers – including Andrew & Suzanne Co. Inc., Bloomingdale’s, Inc., Bluefly, Inc,

¹ On May 15, 2007, due to subsequent remedial measures that Foot Locker, Inc. and Michael Kors USA, Inc. implemented, The HSUS submitted an Amended Petition to the FTC withdrawing these two companies as named respondents.

Caché, Inc., Dillard's, Inc., Dr. Jays, Inc., ELuxury.com, Inc., Lord & Taylor, LLC, Neiman Marcus Group, Inc., Pasha & Jo, Ramosport, Saks Incorporated, Sears, Roebuck and Co., and Yoox S.p.A. (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, simply "fur," or genuine raccoon, fox, or rabbit fur, when, in fact, the garments include fur from members of the canine family, such as raccoon dog, or from entirely different animal species.

Accordingly, The HSUS again respectfully requests that the Commission take prompt action against 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. Petitioner

a. The HSUS

The HSUS is the nation's largest animal protection organization with over 10.5 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 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 The HSUS and its members by misleading humane consumers into buying real fur products and increasing consumer confusion over the origin and humaneness of fur-trimmed garments sold at retail, thereby hampering The HSUS's organizational mission.

2. Respondents

a. **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. The corporate headquarters are located at 570 Seventh Avenue, Floor 2, New York, NY 10018.

b. **Bloomingdale's, Inc.**

Bloomingdale's, Inc. ("Bloomingdale's") is a major retail department store selling clothing, apparel, and home goods. Bloomingdale's is owned by Macy's, Inc. Bloomingdale's offers a variety of name brand and private label clothing merchandise, including house brand Aqua. Bloomingdale's operates approximately forty department stores in twelve states and an online website at www.bloomingdales.com. Its headquarters are located at 1000 3rd Ave., New York, NY 10022.

c. **Bluefly, Inc.**

Bluefly, Inc. ("Bluefly") is an internet retailer that sells over 350 brands of discounted designer apparel, accessories and home products on its online website, www.bluefly.com. Its corporate headquarters are located at 42 West 39th Street, New York, NY 10018.

d. **Caché, Inc.**

Caché, Inc. ("Caché") is a nationwide, mall-based specialty retailer of lifestyle sportswear and dresses targeting style-conscious women between the ages of 25 to 45. Its

apparel includes eveningwear, casual and daytime sportswear, and accessories, all of which are sold under its Caché brand. Caché exclusively sells their own brand of clothing, both through their retail stores and their website, www.cache.com. Caché currently operates 300 stores nationwide. Its headquarters are located at 1440 Broadway 5th Floor, New York, NY 10018.

e. **Dillard's, Inc.**

Dillard's, Inc. ("Dillard's") operates retail department stores located primarily in the southeastern, southwestern and midwestern areas of the United States. Dillard's operates approximately 330 department stores spanning twenty-nine states and an online store at www.dillards.com. Dillard's offers a mix of name brand and private label merchandise, including house brand Preston & York. Its corporate headquarters are located at 1600 Cantrell Road, Little Rock, AR 72201.

f. **Dr. Jays, Inc.**

Dr. Jays, Inc. ("Dr. Jays") is a retailer of casual apparel and sportswear aimed at the urban youth market. The company operates nearly twenty Dr. Jays' stores in the greater New York City metropolitan area and derives significant sales through its website, www.drjays.com. Its headquarters are located at 19 W. 34th St., New York, NY 10001.

g. **ELuxury.com, Inc.**

ELuxury.com, Inc. ("Eluxury.com") is an American internet retailer specializing in luxury goods and designer fashion including highly sought-after handbags, apparel, shoes, jewelry, beauty products, and leather goods. Its headquarters are located at One Front Street, San Francisco, CA 94111. ELuxury.com, Inc is fully owned by the French company the Moët Hennessey Louis Vuitton Group, the world's leading luxury products group. Its headquarters are located at 22 Avenue Montaigne, 75008 Paris, France.

h. **Lord & Taylor, LLC**

Lord & Taylor, LLC (“Lord & Taylor”) is an upscale department store retailer with forty-seven locations and an online store at www.lordandtaylor.com. Its corporate headquarters are located at 424 Fifth Avenue, New York, NY 10018.

i. **Neiman Marcus Group, Inc.**

Neiman Marcus Group, Inc. (“Neiman Marcus”), a premier luxury retailer, operates thirty-nine flagship stores and twenty-two outlet stores in the United States. The company also includes Neiman Marcus Direct, which operates both a print catalog and an online store located at www.neimanmarcus.com. Its corporate headquarters are located at One Marcus Square, 1618 Main Street, Dallas, TX 75201.

j. **Pasha & Jo**

Pasha & Jo is an American designer and manufacturer of outerwear that uses high tech and innovative fabrics. Its headquarters are located at 214 West 39th Street, Suite 806, New York, NY 10018.

k. **Ramosport**

Ramosport is a French company that specializes in the design and manufacturing of luxury outerwear, men’s wear, and accessories, which they produce in their couture studio in Paris, France. The United States is the primary importer of Ramosport products and 60 percent of the company’s 6.7 million dollars in sales come from outside of France. Ramosport’s clothing and accessories are sold in 400 boutiques around the world, including Yoox.com, as well as department stores such as Bloomingdale’s and Neiman Marcus. Its corporate headquarters are located at 10, rue Martel 75010 Paris, France.

1. **Saks Incorporated**

Saks Incorporated operates luxury retail department stores under the name “Saks Fifth Avenue.” In addition to the fifty-four flagship stores, forty-eight outlet stores, and ninety children’s stores, it operates an online store, www.saks.com. Its corporate headquarters are located at 12 East 49th Street, New York, NY 10017.

m. **Sears, Roebuck and Co.**

Sears, Roebuck and Co., (“Sears”), a wholly owned subsidiary of Sears Holdings Corporation, is a leading retailer offering, among other things, a wide range of home merchandise and apparel through more than 2,400 Sears-branded and affiliated stores in the United States, Canada and its website, www.sears.com. Its headquarters are located at 3333 Beverly Rd., Hoffman Estates, IL 60179.

n. **Yoox S.p.A.**

Yoox S.p.A, doing business as Yoox.com (“Yoox.com”), is an Italian company located at Via Nannetti, 1, 40069 Zola Predosa, Bologna, Italy. Yoox.com is an internet store that specializes in the retail sales of exclusive clothing and apparel of Italian and international designers. Yoox.com is a United States website operated and licensed by Yoox Corporation, a Delaware corporation. Its headquarters are located at 80 River Street, Hoboken, NJ, 07030.

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> (Exh. 3). 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.² *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 (last visited Mar. 21, 2008). Raccoon dogs are native to eastern Siberia, North Vietnam, Korea, Japan, and China, and are about the size of a fox. *Id.*

² 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) (Exh. 4).

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) (Exh. 4). As a result of this 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 the mislabeling or lack of labeling of fur garments in the fashion industry.

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

For the past three years, The HSUS has investigated numerous retailers and designers that are currently or have been manufacturing and/or selling deceptively advertised and/or labeled fur-trimmed garments. Since 2005, The HSUS determined that the practice had become widespread in the industry. *See* March 13, 2007 Petition (Exh. 1). The 2005-2007 investigation uncovered that 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, and mislabeled as genuine raccoon or coyote fur, or simply not labeled at all.

As described below, during the recent 2007-2008 winter season, The HSUS continued its investigation and determined that this widespread consumer deception has continued to spread, as an abundance of garments made from genuine raccoon, rabbit, fox, and raccoon dog were being falsely advertised as “faux” and/or mislabeled with the incorrect name of the animal that produced the fur.

1. Falsely Advertising Real Fur as Faux Fur

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

a. **Saks Fifth Avenue**

In December 2007, Saks Fifth Avenue’s website, www.saksfifthavenue.com, advertised a Burberry³ brand coat as having a “detachable faux fur collar.” *See* Saks Fifth Avenue’s Online Advertisement of Burberry Jacket (Exh. 5); *see also* Photograph of Saks Fifth Avenue’s Burberry Jacket (Exh. 6). However, after an HSUS investigator purchased and received this coat, on December 19, 2007, mass spectrometry tests confirmed that this jacket, advertised as faux fur, tested positive for rabbit fur. *See* Gene-Facts’ Analysis of Sample #MM 1 (Exh. 7).

b. **Neiman Marcus**

In November 2007, the retailer Neiman Marcus, through their website www.neimanmarcus.com, advertised an Adam+Eve⁴ brand jacket as having a “faux fur-trim collar.” *See* Neiman Marcus’ Online Advertisement of Adam+Eve Jacket (Exh. 8); *see also* Photograph of Neiman Marcus’ Adam+Eve Jacket (Exh. 9). Upon purchase in November 2007, it was discovered by HSUS investigators that the garment, advertised as faux fur, contained a label identifying the fur trim as “100% rabbit fur.” *See* Photograph of Neiman Marcus’ Adam+Eve Jacket’s Label (Exh. 10). On December 19, 2007, mass spectrometry tests

³ Burberry Group PLC is not a named Respondent in this Petition because although Burberry’s garment did not contain any label identifying the name of the animal that produced the fur, it is likely exempted by 16 C.F.R. § 301.39(a), which generally exempts fur products from the FPLA’s labeling requirements if the value of the fur trim does not exceed \$150. However, this exemption is inapplicable to Saks Fifth Avenue because Saks falsely advertised the Burberry brand jacket as faux fur, even though the fur was derived from rabbit. *Id.* § (a)(2) (exemption “shall not be applicable” “[i]f any false, deceptive, or misleading representations as to the fur contained in the fur product are made”); *see also id.* § (a)(3)(ii) (exemption “shall not be applicable” “[i]f any representations as to the fur are made in . . . advertising without disclosing . . . the information required to be disclosed under section 5(a)(1)” of the FPLA, which is the proper name of the animal that produced the fur).

⁴ Adam+Eve, Inc. is not a named Respondent in this Petition because the garment’s label correctly identified the name of the animal that produced the fur, as provided by the Fur Products Name Guide, 16 C.F.R. § 301.0.

commissioned by The HSUS reported that this garment, advertised as containing faux fur, was actually trimmed with genuine rabbit fur. *See* Gene-Facts' Analysis of Sample #JJ 1 (Exh. 11).

c. **Dillard's**

In November 2007, Dillard's website advertised a Dillard's Preston & York house brand jacket as having "removable faux-fur trim." *See* Dillard's Online Advertisement of Preston & York Jacket (Exh. 12). However, after purchase and receipt by an HSUS investigator, it was discovered that the garment, advertised as faux fur, contained labels indicating that the jacket was trimmed in real animal fur from two different species – the first identifying the fur trim as "fox fur" and the second identifying the fur trim as "raccoon." *See* Photographs of Dillard's Preston & York Jacket and Labels (Exh. 13, 14, and 15). On December 14, 2007, mass spectrometry tests confirmed that this coat, advertised as containing faux fur but labeled as containing fox and raccoon fur, was actually trimmed with genuine raccoon fur. *See* Gene-Facts' Analysis of Sample #DD 1 (Exh. 16); *see also* Gene-Facts' Analysis of Sample #DD 6 (Exh. 17).

d. **Yoox.com and Ramosport**

In November of 2007, the online retailer Yoox.com advertised a Ramosport brand jacket lined with "Ecological Fur." *See* Yoox.com Online Advertisement of Ramosport Jacket (Exh. 18). In response to an inquiry by The HSUS in December 2007, the customer service department of Yoox.com confirmed that ecological fur "is indeed fake fur." *See* Yoox.com Customer Service Email Response (Exh. 19). Upon purchase in November 2007, it was discovered by HSUS investigators that this garment, advertised as containing faux fur, was labeled as containing "sunday/raccoon" fur. *See* Photographs of Yoox.com's Ramosport Jacket and Label (Exh. 20 and 21). On December 14, 2007, mass spectrometry testing commissioned by The HSUS reported that this garment, advertised as containing faux fur and labeled as containing raccoon

fur, contained fur from the wholly distinct species of raccoon dog. *See* Gene-Facts' Analysis of Sample #FF 1 (Exh. 22).

e. **Bloomingdale's**

In September 2007, department store retailer Bloomingdale's, through their website www.bloomingdales.com, advertised an Aqua house brand "faux fur lined" jacket. *See* Bloomingdale's Online Advertisement of Aqua Jacket (Exh. 23). After HSUS investigators purchased this jacket, they discovered that the garment's labels stated "rabbit fur," even though it was advertised as faux. *See* Photographs of Bloomingdale's Aqua Jacket and Label (Exh. 24 and 25). On December 19, 2007, mass spectrometry tests confirmed that this jacket, advertised as faux fur, was actually trimmed in genuine rabbit fur. *See* Gene-Facts' Analysis of Sample #KK 2 (Exh. 26).

2. Falsely Labeling Real Fur as Faux Fur

a. **Neiman Marcus, Lord & Taylor, and Andrew Marc**

In November 2007, The HSUS purchased from retailer Neiman Marcus an Andrew Marc brand jacket that was labeled as "Trim: polyester 100%." *See* Photographs of Neiman Marcus' Andrew Marc Jacket and Label (Exh. 27 and 28). On December 14, 2007, mass spectrometry test reported that this garment, labeled as containing fake polyester fur, was actually trimmed with genuine raccoon dog fur. *See* Gene-Facts' Analysis of Sample #EE 2 (Exh. 29); *see also* Gene-Facts' Analysis of Sample #EE 4 (Exh. 30).

In December 2007, HSUS investigators purchased another Andrew Marc "Marc New York" brand jacket from retailer Lord & Taylor. This fur-trimmed garment was similarly labeled as "Trim: polyester 100%." *See* Photographs of Lord & Taylor's Marc New York Jacket and Label (Exh. 31 and 32). On December 19, 2007 mass spectrometry tests commissioned by

the HSUS confirmed that this garment, labeled as faux polyester fur, contained both genuine rabbit and raccoon dog fur. *See* Gene-Facts' Analysis of Sample #GG 1 (Exh. 33); *see also* Gene-Facts' Analysis of Sample #HH 1 (Exh. 34).

3. Falsely Advertising and Labeling Canine Fur as Rabbit or Raccoon Fur

a. **Eluxury.com**

In November 2007, online retailer Eluxury.com advertised a Juicy Couture⁵ brand jacket as having a “detachable rabbit fur collar.” *See* Eluxury.com's Online Advertisement of Juicy Couture Jacket (Exh. 35). However, upon purchase and receipt, HSUS investigators discovered that the garment's label stated “100% Natural Asiatic Raccoon” and “Fur Origin: China.” *See* Photographs of Eluxury.com's Juicy Couture Jacket and Label (Exh. 36 and 37). On January 31, 2008, mass spectrometry tests commissioned by The HSUS confirmed that this garment's fur trim, advertised as genuine rabbit, was derived from raccoon dog. *See* Gene-Facts' Analysis of Sample #UU 1 (Exh. 38).

b. **Dillard's**

In November 2007, Dillard's website advertised a Preston & York house brand jacket as having a “genuine raccoon-trimmed collar.” *See* Dillard's Online Advertisement of Preston & York Jacket (Exh. 39). The garment's label also stated “Trim: Genuine Dyed Racoon [sic] Fur.” *See* Photographs of Dillard's Preston & York Jacket and Label (Exh. 40 and 41). On December 14, 2007 mass spectrometry tests subsequently reported that this jacket, advertised and labeled as containing genuine raccoon fur, was actually trimmed with the wholly distinct species of raccoon dog fur. *See* Gene-Facts' Analysis of Sample #CC 6 (Exh. 42).

⁵ Juicy Couture, a brand of Liz Claiborne, Inc., is not a named Respondent in this Petition because it correctly labeled the garment as “Asiatic Raccoon,” as required by the Fur Products Name Guide, 16 C.F.R. § 301.0.

c. **Dr. Jays**

In November 2007, online retailer Dr. Jays advertised an Azzuré⁶ brand vest jacket as having a “detachable fur trim.” *See* Dr. Jays’ Online Advertisement of Azzuré Jacket (Exh. 43); *see also* Photograph of Dr. Jays’ Azzuré Jacket (Exh. 44). On December 19, 2007, mass spectrometry tests reported that the vest jacket, advertised simply as “fur,” tested positive for raccoon dog. *See* Gene-Facts’ Analysis of Sample #II 2 (Exh. 45).

d. **Caché**

In November 2007, retailer Caché advertised a Caché house brand jacket as having a “raccoon fur trim hood” on its online website, www.cache.com. *See* Caché’s Online Advertisement of Jacket (Exh. 46). After purchasing the item online, HSUS investigators discovered that the garment’s label also stated “Trim: 100% Raccoon Fur.” *See* Photographs of Caché Jacket and Label (Exh. 47 and 48). However, on December 19, 2007, mass spectrometry tests reported that this jacket, advertised and labeled as containing genuine raccoon fur, was actually trimmed with the wholly distinct species of raccoon dog. *See* Gene-Facts’ Analysis of Sample #NN 1 (Exh. 49).

4. Misrepresenting the Name of the Animal that Produced the Fur

a. **Bluefly and Pasha & Jo**

In November 2007, Bluefly.com advertised a Pasha & Jo brand jacket as having a “removable raccoon fur trimmed collar.” *See* Bluefly’s Online Advertisement of Pasha & Jo

⁶ Azzuré LLC is not a named Respondent in this Petition because although Azzuré’s garment did not contain any label identifying the name of the animal that produced the fur, it is likely exempted by 16 C.F.R. § 301.39(a), which generally exempts fur products from the FPLA’s labeling requirements if the value of the fur trim does not exceed \$150. However, this exemption is inapplicable to Dr. Jays because Dr. Jays falsely advertised the Azzuré brand jacket as simply “fur,” even though the fur trim was derived from raccoon dog. *Id.* § (a)(2) (exemption “shall not be applicable” “[i]f any false, deceptive, or misleading representations as to the fur contained in the fur product are made”); *see also id.* § (a)(3)(ii) (exemption “shall not be applicable” “[i]f any representations as to the fur are made in . . . advertising without disclosing . . . the information required to be disclosed under section 5(a)(1)” of the FPLA, which is the proper name of the animal that produced the fur).

Jacket (Exh. 50). After an HSUS investigator purchased and received the coat, it was discovered that the garment contained two conflicting labels – one identifying the fur trim as “fox” and the other “100% Natural Raccoon.” *See* Photographs of Bluefly’s Pasha & Jo Jacket and Label (Exh. 51 and 52). On January 21, 2008, mass spectrometry tests commissioned by The HSUS confirmed that this jacket, advertised as raccoon fur but labeled as both fox and genuine raccoon fur, was actually trimmed with the wholly distinct species of arctic fox. *See* Gene-Facts’ Analysis of Sample #SS 1 (Exh. 53).

b. Sears and Excelled

In September 2007, Sears’ website, www.sears.com, advertised an Excelled⁷ brand parka as having a “fox fur trimmed hood.” *See* Sears’ Online Advertisement of Excelled Jacket (Exh. 54); *see also* Photograph of Sears’ Excelled Jacket (Exh. 55). After purchase and receipt, mass spectrometry tests from September 27, 2007 confirmed that this jacket, advertised as fox fur, was actually trimmed with genuine raccoon fur. *See* Gene-Facts’ Analysis of Sample #E (Exh. 56).

D. 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.

⁷ Excelled Sheepskin & Leather Coat Corp. is not a named Respondent in this Petition because although Excelled’s garment did not contain any label identifying the name of the animal that produced the fur, it is likely exempted by 16 C.F.R. § 301.39(a), which generally exempts fur products from the FPLA’s labeling requirements if the value of the fur trim does not exceed \$150. However, this exemption is inapplicable to Sears because Sears falsely advertised the Excelled brand jacket as fox fur, even though the fur was derived from raccoon. *Id.* § (a)(2) (exemption “shall not be applicable” “[i]f any false, deceptive, or misleading representations as to the fur contained in the fur product are made”); *see also id.* § (a)(3)(ii) (exemption “shall not be applicable” “[i]f any representations as to the fur are made in . . . advertising without disclosing . . . the information required to be disclosed under section 5(a)(1)” of the FPLA, which is the proper name of the animal that produced the fur).

Table 1: Summary of 2007-2008 Investigation and Mass Spectrometry Results

Retailer	Brand	Advertised	Labeled	Test Result
Saks Fifth Avenue	Burberry*	Detachable Faux Fur Collar	---	Rabbit
Neiman Marcus	Andrew Marc	---	Trim: Polyester 100%	Raccoon Dog
Neiman Marcus	Adam+Eve*	Faux Fur-Trim Collar	Trim: 100% Rabbit Fur	Rabbit
Lord & Taylor	Marc New York	---	Trim: Polyester 100%	Raccoon Dog <i>and</i> Rabbit
Dillard's	Preston & York (house brand)	Removable Faux-Fur-Trim	Fox Fur Trim <i>and</i> Fur Trim: Raccoon	Raccoon
Yoox.com	Ramosport	Ecological Fur (faux fur)	Sunday / Raccoon	Raccoon Dog
Bloomingdale's	Aqua (house brand)	Faux Fur	Rabbit Fur	Rabbit
Eluxury.com	Juicy Couture*	Rabbit Fur Collar	Asiatic Raccoon (Raccoon Dog)	Raccoon Dog
Dillard's	Preston & York (house brand)	Genuine Raccoon Trimmed Collar	Raccoon	Raccoon Dog
DrJays.com	Azzuré*	Detachable Fur Trim	---	Raccoon Dog
Caché	Caché	Raccoon Fur Trim	Raccoon	Raccoon Dog
Bluefly	Pasha & Jo	Raccoon Fur Trimmed Collar	Raccoon <i>and</i> Fox	Arctic Fox
Sears	Excelled*	Fox Fur Trimmed Hood	---	Raccoon

***Not Named as a Respondent in this Petition**

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” when the fur is in fact derived from real rabbit, raccoon, or raccoon dog constitutes a clear violation of the FPLA. In addition, the false or deceptive advertising of fur garments as one type of fur when in fact it is derived from an entirely different animal also constitutes a clear violation of the FPLA. Section 3(a) of the FPLA provides that “[t]he introduction, or manufacture for introduction, into commerce, or the sale advertising or offering for sale in commerce . . . 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 and 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).

Pursuant to section 5(a) of the FPLA, “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, directly or by implication, with respect to such fur product or fur,” or “(6) does not show the name of the country of origin of any imported furs or those contained in a fur product.” *Id.* § 69c(a).

In the instant case, Saks Fifth Avenue, Neiman Marcus, Dillard’s, Yoox.com, and Bloomingdale’s advertised and sold their respective fur-trimmed garments as “faux fur” on their websites, rather than correctly advertising the fur-trimmed garments as rabbit or raccoon dog,

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).

In addition, Eluxury.com, Dillard’s, DrJays.com, and Caché advertised and sold their respective fur-trimmed garments as genuine raccoon or rabbit fur, or simply “fur,” rather than correctly advertising such garments as raccoon dog, which is “the name . . . of the animal . . . that produced the fur.”⁸ *Id.* § 69c(a)(1). Also, Bluefly advertised a fur-trimmed garment as raccoon, rather than correctly advertising that garment as arctic fox, and Sears advertised a fur-trimmed garment as fox, rather than raccoon, which is “the name . . . of the animal . . . that produced the fur.” *Id.* 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

⁸ Pursuant to the Fur Products Name Guide, raccoon dog fur must be identified as “Asiatic Raccoon.” 16 C.F.R. § 301.0.

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 polyester/faux fur when the fur is actually derived from real raccoon dog constitutes a clear violation of the FPLA. The false or deceptive labeling of fur-trimmed garments as genuine fox or raccoon 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, 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 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 the instant case, Neiman Marcus, Lord & Taylor, and Andrew Marc are or have been manufacturing and/or selling fur-trimmed garments mislabeled as 100% polyester faux fur, rather than real raccoon dog. In addition, Yoox.com, Ramosport, Dillard’s, and Caché are or have been manufacturing and/or selling fur-trimmed garments mislabeled as genuine raccoon, rather than the wholly distinct species of raccoon dog from which the trim is actually derived. Dillard’s, Bluefly, and Pasha & Jo also are or have been manufacturing and/or selling garments mislabeled as raccoon or a combination of raccoon and fox fur, even though the fur was derived wholly from raccoon or the entirely distinct species of arctic fox. Thus, 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,” “Raccoon,” “Blue Fox,” or “White Fox”] . . . provided for in [the FPLA Name Guide, 16 C.F.R. § 301.0],” *id.* § 69b(3).

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.

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.* 15 U.S.C. § 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 per violation under sections 8, 9, and 11 of the FPLA. *Id.* §§ 69f, 69g, and 69i.

Respectfully submitted,



Dated: April 24, 2008

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

TABLE OF EXHIBITS

Exhibit	Document
1	March 13, 2007 Petition to Enjoin False Advertising and Labeling of Fur Garments and to Impose Civil and Criminal Penalties
2	May 8, 2007 Letter from FTC to The HSUS
3	Mark Rissi <i>et al.</i> , FUN FUR? A REPORT ON THE CHINESE FUR INDUSTRY (2005)
4	The HSUS, WHAT IS THAT THEY'RE WEARING? (1998)
5	Saks Fifth Avenue's Online Advertisement of Burberry Jacket
6	Photograph of Saks Fifth Avenue's Burberry Jacket
7	Gene-Facts' Analysis of Sample #MM 1
8	Neiman Marcus' Online Advertisement of Adam+Eve Jacket
9	Photograph of Neiman Marcus' Adam+Eve Jacket
10	Photograph of Neiman Marcus's Adam+Eve Jacket's Label
11	Gene-Facts' Analysis of Sample #JJ 1
12	Dillard's Online Advertisement of Preston & York Jacket
13	Photograph of Dillard's Preston & York Jacket
14	Photograph of Dillard's Preston & York Jacket's Label
15	Photograph of Dillard's Preston & York Jacket's Label
16	Gene-Facts' Analysis of Sample #DD 1
17	Gene-Facts' Analysis of Sample #DD 6
18	Yoox.com Online Advertisement of Ramosport Jacket
19	Yoox.com Customer Service Email Response
20	Photograph of Yoox.com's Ramosport Jacket
21	Photograph of Yoox.com's Ramosport Jacket's Label
22	Gene-Facts' Analysis of Sample #FF 1
23	Bloomingdale's Online Advertisement of Aqua Jacket
24	Photograph of Bloomingdale's Aqua Jacket
25	Photograph of Bloomingdale's Aqua Jacket's Label
26	Gene-Facts' Analysis of Sample #KK 2
27	Photograph of Neiman Marcus' Andrew Marc Jacket
28	Photograph of Neiman Marcus' Andrew Marc Jacket's Label
29	Gene-Facts' Analysis of Sample #EE 2
30	Gene-Facts' Analysis of Sample #EE 4
31	Photograph of Lord & Taylor's Marc New York Jacket
32	Photograph of Lord & Taylor's Marc New York Jacket's Label
33	Gene-Facts' Analysis of Sample #GG 1
34	Gene-Facts' Analysis of Sample #HH 1
35	Eluxury.com's Online Advertisement of Juicy Couture Jacket
36	Photograph of Eluxury.com's Juicy Couture Jacket
37	Photograph of Eluxury.com's Juicy Couture Jacket's Label
38	Gene-Facts' Analysis of Sample #UU 1
39	Dillard's Online Advertisement of Preston & York Jacket
40	Photograph of Dillard's Preston & York Jacket
41	Photograph of Dillard's Preston & York Jacket's Label

42	Gene-Facts' Analysis of Sample #CC 6
43	Dr. Jays' Online Advertisement of Azzuré Jacket
44	Photograph of Dr. Jays' Azzuré Jacket
45	Gene-Facts' Analysis of Sample #II 2
46	Caché's Online Advertisement of Jacket
47	Photograph of Caché's Jacket
48	Photograph of Caché's Jacket's Label
49	Gene-Facts' Analysis of Sample #NN 1
50	Bluefly's Online Advertisement of Pasha & Jo Jacket
51	Photograph of Bluefly's Pasha & Jo Jacket
52	Photograph of Bluefly's Pasha & Jo Jacket's Label
53	Gene-Facts' Analysis of Sample #SS 1
54	Sears' Online Advertisement of Excelled Jacket
55	Photograph of Sears' Excelled Jacket
56	Gene-Facts' Analysis of Sample #E