

BEFORE THE UNITED STATES FEDERAL TRADE COMMISSION

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THE HUMANE SOCIETY OF THE UNITED STATES,

Petitioner,

v.

DRJAYS.COM, INC.,

Respondent.

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**PETITION TO ENFORCE CONSENT ORDER, TO ENJOIN FALSE ADVERTISING  
AND LABELING OF FUR GARMENTS, AND TO IMPOSE CIVIL PENALTIES**

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## INTRODUCTION

Pursuant to Sections 2.1 and 2.2 of the Federal Trade Commission (“FTC”) regulations, 16 C.F.R. §§ 2.1 and 2.2, The Humane Society of the United States (“HSUS”) hereby petitions the FTC to investigate and commence enforcement actions against respondent DrJays.com, Inc. (“DrJays”), which is now or has recently been engaged in the advertising and sale of fur-trimmed garments in violation of the federal Fur Products Labeling Act (“FPLA”), 15 U.S.C. §§ 69–69j, and its Agreement Containing Consent Order (“Consent Order”) with the FTC dated July 18, 2013. Decision and Order, *In the Matter of DrJays.com, Inc.*, File No. 1223063, Docket No. C-4408 (July 18, 2013).

As described herein, HSUS has amassed evidence that DrJays has recently sold fur garments that are falsely and misleadingly advertised and labeled as faux fur when, in fact, the garments include real animal fur. This evidence indicates that DrJays engaged in these practices *after* the date of entry of the Consent Order. The Consent Order “permanently restrained and enjoined” respondent from, *inter alia*, “falsely or deceptively advertising any fur product by misrepresenting...[t]hat the fur in any fur product is faux or fake.”

Accordingly, HSUS respectfully requests that the FTC take prompt action against the Respondent, 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, 69i. Because these FPLA violations also constitute violations of the Consent Order, HSUS additionally urges the FTC to seek penalties under the Section 5 of the FTC Act, which can range up to \$16,000 per violation of an FTC order, and may treat each day of ongoing noncompliance as a separate violation. 15 U.S.C. § 45(l); 16 C.F.R. 1.98(c).

## **BACKGROUND**

### **A. The Parties**

#### 1. Petitioner

The HSUS is the nation's largest animal protection organization. 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 seventy-five million fur-bearing animals are killed annually, and often inhumanely, for the purpose of obtaining their pelts for wearing apparel and other products, 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 The 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, requiring diversion and depletion of The HSUS's limited resources, and thereby hampering The HSUS's organizational mission.

#### 2. Respondent

DrJays.com, Inc. ("DrJays") is an online retailer of casual apparel and sportswear aimed at the urban youth market. It derives significant sales through its website, [www.drjays.com](http://www.drjays.com). Twenty brick-and-mortar DrJays stores also operate in the greater New York City metropolitan area.<sup>1</sup> Its headquarters are located at 19 West 34th Street, New York, New York, 10001.

### **B. The Fur Products Labeling Act and Faux Fur**

The FPLA, enacted by Congress in 1951 in response to rampant false advertising and false labeling of fur garments, requires that such garments be labeled with the name of the

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<sup>1</sup> [http://www.drjays.com/content/customerservice/about\\_us.html](http://www.drjays.com/content/customerservice/about_us.html)

species or animal type used to make the garment, the manufacturer, country of origin, and other information. *See* 15 U.S.C. §§ 69–69j. The law was intended to prevent unfair competition in the marketplace and to protect consumers by providing accurate, consistent product information about the fur content in garments.<sup>2</sup>

The presence or absence of real animal fur on a garment is an attribute that is relevant to and valued by consumers and affects demand for the product. Some consumers are allergic to all animal fur or to the fur from specific animal species. Other consumers make ethical considerations in advance of purchase because of concerns about the morality of wearing animal fur. In fact, according to a May 2014 Gallup poll, 37 percent of Americans find “buying and wearing clothing made of animal fur” to be “morally wrong.”<sup>3</sup>

These considerations have led to a growing consumer demand for faux fur. Accordingly, “faux fur” advertisements generally target the specific class of consumers who are deeply concerned with the welfare of animals and who specifically attempt to buy products that are produced in a way that does not negatively impact animal welfare. However, improvements in synthetic materials have made it increasingly difficult to distinguish between real and faux fur. Some clothing companies fail to correctly advertise and label fur garments as faux or real, confusing and misleading consumers by marketing and selling fur derived from animals as faux fur. Indeed, a series of past investigations conducted by The HSUS in 2005–2007, 2007–2008, and 2010–2011 revealed that retailers, including respondent DrJays, were selling deceptively advertised and/or labeled fur-trimmed garments and that such practices were pervasive throughout the industry. *See* The HSUS, Petition before the Federal Trade Commission, May 15,

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<sup>2</sup> “Fur-Labeling Law Starts Tomorrow.” The New York Times. August 8, 1952.

<sup>3</sup> Gallup News Service, “Gallup Poll Social Series: Values and Beliefs” (May 2014) (*available at* [http://www.gallup.com/file/poll/170798/Moral\\_Acceptability\\_140530.pdf](http://www.gallup.com/file/poll/170798/Moral_Acceptability_140530.pdf)).

2007; The HSUS, Petition before the Federal Trade Commission, April 24, 2008; The HSUS, Petition before the Federal Trade Commission, November 22, 2011.

Such actions not only mislead humane-conscious consumers into unknowingly purchasing real fur products, but also further increase consumer confusion over the type and origin of fur that is used on garments. As a result of this deception, consumers who may have allergies to fur, ethical objections to fur, or a concern about the use of certain species, cannot make informed purchasing choices.

Furthermore, the false marketing of animal fur apparel as “faux” likely causes damage to those apparel companies legitimately selling actual faux fur, whose customers, or potential customers, may be hesitant to purchase their legitimate product due to a lack of confidence in the claim. This false marketing is therefore also unfair to those companies who ensure their animal fur wearing apparel is being sold in compliance with the FPLA.

### **C. Petitioner’s 2011 Petition**

Following a year-long investigation, HSUS submitted a petition to the FTC on November 22, 2011 (“2011 Petition”) documenting widespread false advertising and labeling of fur-trimmed garments. *See* The HSUS, Petition before the Federal Trade Commission, November 22, 2011. The 2011 Petition demonstrated that an alarming quantity of garments were being falsely advertised or labeled as “faux fur” when, in fact, the garments contained real animal fur, in violation of the FPLA. Among the 15 offending garments sold by 11 retailers identified in the 2011 Petition were three garments sold by respondent DrJays.

As a result of HSUS’ 2011 Petition, FTC commendably initiated enforcement proceedings against DrJays and a number of other retailers identified in the Petition. *See, e.g., In the Matter of DrJays.com, Inc.*, FTC File No. 122 3063 (last updated Aug. 6, 2013). These proceedings

resulted in the entry of consent orders against three retailers, including DrJays. *See id.*, Docket No. C-4408 (July 18, 2013).

**D. The Consent Order**

The FTC issued a decision incorporating the Consent Order against DrJays on July 18, 2013. *Id.* Among other terms, the Consent Order “permanently restrained and enjoined” DrJays from “engaging in...violations of the [FPLA] and the Fur Rules.” *Id.*, Sec. I. The Order specifies that this injunction includes but is not limited to “falsely or deceptively advertising any fur product by misrepresenting...[that] the fur in any product is faux or fake.” *Id.* It also ordered DrJays to maintain all records of... “any representation...about any covered product in any advertisement disseminated through the mail, on any website, or in any catalog.” *Id.*

**E. Respondent’s Continuing False and Misleading Advertising and Labeling of Fur Products**

A 2013 HSUS investigation of DrJays after the entry of the Consent Order identified two garments offered for sale on DrJays’ website that violate both the FPLA and the terms of the Consent Order. These garments were advertised as containing “faux fur,” but laboratory testing of garments purchased by HSUS confirmed that each contains animal fur.

In August of 2013, DrJays’ website advertised a Mustard Seed brand dress as having “[f]aux fur and metal stud accents on shoulders.” *See* DrJays’ Online Advertisement of Mustard Seed Dress (Aug. 7, 2013) (Attachment B); *see also* Photograph of Mustard Seed Dress (Attachment C). Upon HSUS’ purchase on August 7, 2013, it was discovered that none of the dress’ labels contained information about the garment’s fur content. *See* Photographs of Mustard Seed Dress Labels (Attachment D). In addition, results of macroscopic and microscopic tests commissioned by HSUS to determine whether the dress’ fur trim “is composed of animal or...

artificial fur” concluded that it is “composed of *animal fur*” which “originates from either a rabbit or a hare.” *See* Microtrace Analysis of Sample DJMEL080713 (Attachment E) (emphasis added). This dress was still being advertised as containing “faux fur” on DrJays’ website as of July 7, 2014. *See* DrJays’ Online Advertisement of Mustard Seed Dress (July 7, 2014) (Attachment F).

In addition, in December of 2013, DrJays’ website advertised a Knoles & Carter brand jacket as having a “[f]aux fur hood.” *See* DrJays’ Online Advertisement of Knoles & Carter Jacket (Attachment G); *see also* Photograph of Knoles & Carter Jacket (Attachment H). Upon HSUS’ purchase on December 23, 2013, it was discovered that none of the jacket’s labels contained information about the garment’s fur content. *See* Photographs of Knoles & Carter Jacket Labels (Attachment I). Results of macroscopic and microscopic tests commissioned by HSUS to determine whether the hood’s fur trim “is composed of animal or...artificial fur” concluded that the trim is “composed of *animal fur*...consistent with hairs from the raccoon dog (*Nyctereutes procyonoides*).” *See* Microtrace Analysis of Sample DRJK&C122313 (Attachment J) (emphasis added). This jacket was still being advertised as containing “faux fur” on DrJays’ website as of July 7, 2014. *See* DrJays’ Online Advertisement of Knoles & Carter Jacket (July 7, 2014) (Attachment K).

Below is a table that summarizes the aforementioned evidence and test results. A graphical table illustrating all of this information is also attached to this Petition as Attachment A.<sup>4</sup>

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<sup>4</sup> Although the documentation attached to this Petition is sufficient to prove all the alleged violations, DrJays should also have records of the advertisements in question pursuant to its obligations under Section II of the Consent Order.

**Table 1: Summary of Fall 2013 DrJays.com Investigation**

<b>Garment Type</b>	<b>Brand</b>	<b>Advertised</b>	<b>Labeled</b>	<b>Tested</b>
Dress	Mustard Seed	Faux Fur	No information regarding fur trim on labels	Animal fur (rabbit)
Jacket	Knoles & Carter	Faux fur	No information regarding fur trim on labels	Animal fur (raccoon dog)

**VIOLATIONS OF THE FEDERAL FUR PRODUCTS LABELING ACT AND CONSENT ORDER**

**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 they are, in fact, derived from real animal fur constitutes a violation of the FPLA and FTC Act. 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. . . *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 [FTC Act].” 15 U.S.C. § 69a(a) (emphasis added).

Under 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 (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur. . . ;*

...

(5) contains the name or names of any animal or animals other than the name or names specified in paragraph (1) of this subsection, *or contains any form of misrepresentation or deception, directly or by implication, with respect to such fur product or fur;*

(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) (emphasis added).

Here, the respondent DrJays advertised, and continues to advertise<sup>5</sup>, two garments as containing “faux fur” on its website, when in fact the fur in each is derived from real animal fur. This advertising thus contains a direct “form of misrepresentation or deception,” *id.* § 69c(a)(5); “does not show the name or names. . . of the animal or animals that produced the fur,” *id.* § 69c(a)(1); and “does not show the name of the country of origin of any imported furs or those contained in” the garments. *Id.* § 69c(a)(6). As a result, these garments “shall be considered to be falsely or deceptively advertised” in violation of the FPLA. *Id.* § 69c(a).

These violations of the false advertising provisions of the FPLA warrant immediate enforcement action both on their face and because they constitute violations of the Consent Order. *See, e.g.,* Complaint, *In the Matter of DrJays.com, Inc.*, FTC File No. 1223063, Docket No. C-4408 (2013) (FTC bringing FPLA and FTC Act enforcement action based on false online advertising of real fur as “faux”); *Mannis v. F.T.C.*, 293 F.2d 774, 777 (9th Cir. 1961) (affirming FTC’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

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<sup>5</sup> Both online advertisements were last accessed on July 7, 2014. *See* Attachments F, K.

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 also constitutes a violation of the FPLA and FTC Act. Under 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*. . . is *unlawful* and shall be an unfair method of competition, and an unfair or deceptive act or practice, in commerce under the [FTC Act].” 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 --

- (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;

*Id.* § 69b (emphasis added).

In this case, because the garments that respondent DrJays is or has recently been selling as “faux” contain labels which lack *any information* regarding the fur used to make the products, those garments “shall [also] be considered to be misbranded” in violation of the FPLA since “there is not affixed to the fur product a label showing in words and figure plainly legible” the statutorily required information, including name(s) of the animals(s) used to make 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. *Id.*

These violations of the mislabeling provisions of the FPLA warrant immediate enforcement action by the Commission both on their face and because they constitute violations of the Consent Order. *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. Violations of the Consent Order**

The Consent Order “permanently restrained and enjoined” respondent DrJays “from engaging in...violations of the [FPLA] and Fur Rules, including, but not limited to, falsely or deceptively advertising any fur product by misrepresenting or failing to disclose...

A. That the fur in any fur product is faux or fake;

- B. The name or names (as set forth in the Fur Products Name Guide, C.F.R. § 301.0) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to 15 U.S.C. § 69e(c);

...

- F. The name of the country of origin of any imported furs or those contained in the fur product.

Consent Order, Sec. I. Consequently, each violation of the FPLA enumerated above also constitutes a violation of the Consent Order.

As the FTC itself made clear in its response to commenters concerned that the Consent Order did not impose “meaningful consequences” on DrJays, “a violation of an FTC order is punishable by a civil penalty of up to \$16,000 per violation. Therefore, if the respondents’ websites falsely advertise fur products as ‘faux’ in the future, the respondents may be liable for significant civil penalties.” *See, e.g.* Letter to Commenter Castle, *In the Matter of DrJays.com, Inc.*, FTC File No. 1223063, Docket No. C-4408 (July 18, 2013). At a minimum, the multiple FPLA violations accrued by DrJays’ false advertising and false labeling of each garment constitute independent violations of the Order. The FTC may also treat each day of ongoing noncompliance with the Order as a separate violation. 15 U.S.C. § 45(l); *see also U.S. v. Alpine Industries, Inc.*, 352 F.3d 1017, 1030 (2003) (6th Cir.) (upholding a civil penalty that assessed a daily fine to violator of FTC consent order).

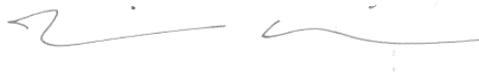
If the FPLA is to have any meaning and effect, the FTC must seek these strict penalties for respondent’s cavalier violations of the Consent Order. To do otherwise would signal to industry that even the most egregious false advertising carries no meaningful legal consequences.

**RELIEF REQUESTED**

The actions described and documented in this Petition constitute false advertising and misbranding under the FPLA, 15 U.S.C. §§ 69b, 69c, as well as unlawful conduct, unfair methods of competition, and unfair and deceptive practices under the FTC Act. *Id.* § 69a. They additionally constitute violations of the Consent Order, which enjoined DrJays from any further violations of the FPLA and specifically restrained DrJays from falsely advertising real animal fur as faux. Consent Order, Sec. I.

Pursuant to Section 8 of the FPLA, the Commission is empowered to enforce the Act and prohibit persons from violating the Act. *Id.* § 69f. The FTC is also empowered to seek civil penalties for violations of its orders under the FTC Act. 15 U.S.C. § 45. Accordingly, 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 for violations of the FPLA, *id.* §§ 69f, 69g, 69i, and \$16,000 per violation for violations of the Consent Order. 15 U.S.C. § 45(l); 16 C.F.R. 1.98(c).

Respectfully submitted,



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DATE: July 9, 2014