

BEFORE THE UNITED STATES FEDERAL TRADE COMMISSION

THE HUMANE SOCIETY OF THE UNITED STATES,

Petitioner,

v.

BARNEYS NEW YORK, INC., BEYOND THE RACK ENTERPRISES, INC.; BOP, LLC;
DILLARD'S, INC.; DRJAYS.COM, INC.; EMINENT, INC. DBA REVOLVE CLOTHING;
GILT GROUPE, INC.; NEIMAN MARCUS GROUP, INC.; SSENSE, SPA;
SUMMIT SPORTS, INC.; YOOX GROUP, SPA

Respondents.

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

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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, The Humane Society of the United States (“The HSUS”) hereby petitions the Commission to investigate and commence enforcement action against several retailers that are now or have recently been engaged in the advertising and selling of fur-trimmed garments in violation of the federal Fur Products Labeling Act (“FPLA”), 15 U.S.C. §§ 69–69j.

As described herein, The HSUS has amassed evidence that several major retailers—including Barneys New York, Inc.; Beyond the Rack Enterprises, Inc.; Bop, Inc.; Dillard’s, Inc.; DrJays.com, Inc.; Eminent, Inc. dba Revolve Clothing; Gilt Groupe, Inc.; Neiman Marcus Group, Inc; SSENSE, SpA; Summit Sports, Inc.; Yoox Group, SpA (collectively “Respondents”)—are now or have recently been engaged in the selling of fur garments that are falsely or misleadingly advertised and/or labeled as faux fur when, in fact, the garments include fur made from real animal fur.

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. Petitioner

The HSUS is the nation's largest animal protection organization with over eleven million members and supporters. 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 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. Respondents

a. Barneys New York, Inc.

Barneys New York, Inc. ("Barneys") is a luxury retail store operating nine flagship stores, 20 co-op stores, and 14 outlet stores nationwide. It operates an online store at www.barneys.com. Its corporate headquarters are located at 575 Fifth Avenue, New York, New York, 10017.

b. Beyond The Rack Enterprises, Inc.

Beyond the Rack Enterprises, Inc. ("Beyond the Rack") is an online, private shopping

club that offers designer brand apparel and accessories at discount prices on its website, www.beyondtherack.com. Its headquarters are located at 4600 Hickmore, QC H4T 1W1, Montreal, Canada.

c. Bop, LLC

Bop, LLC. (“Bop”) is an online fashion retailer distributing styles from a variety of designers on its website, www.shopbop.com. It operates as a subsidiary of Amazon.com, Inc. Bop’s headquarters are located at 101 East Badger Road, Madison, Wisconsin, 53713.

d. 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 over 300 stores in 29 states and an online store at www.dillards.com. Its corporate headquarters are located at 1600 Cantrell Road, Little Rock, Arizona 72201.

e. DrJays.com, Inc.

DrJays.com, Inc. (“DrJays”) is a retailer of casual apparel and sportswear aimed at the urban youth market. The company operates nearly 20 DrJays’ 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 West 34th Street, New York, New York, 10001.

f. Eminent, Inc. d/b/a Revolve Clothing

Eminent, Inc. doing business as Revolve Clothing (“Eminent”) operates as an online fashion retailer, distributing styles from over 400 designers on its website, www.revolveclothing.com. Its corporate headquarters are located at 16800 Edwards Road Cerritos, California, 90703.

g. Gilt Groupe, Inc.

Gilt Groupe, Inc. (“Gilt”) is an online, members-only fashion retailer distributing styles from top designer labels on its website, www.gilt.com. Its corporate address is located at 2 Park Avenue, 4th Floor, New York, New York, 10016.

h. Neiman Marcus Group, Inc.

Neiman Marcus Stores (“Neiman Marcus”), a luxury retailer with 41 stores nationwide, is the largest subsidiary of Neiman Marcus Group, Inc. Its headquarters are located at One Marcus Square, 1618 Main Street, Dallas, Texas, 75201. The company also controls Neiman Marcus Direct, which operates both a print catalog and an online store located at www.neimanmarcus.com.

i. SSENSE, SpA

SSENSE, S.p.A (“Ssense”) is Canada’s largest online retailer distributing styles from over 200 designers on its website, www.ssense.com. Its headquarters are located at 9600 Meilleur, #1050, QC H2N 2B7 Montreal, Canada.

j. Summit Sports, Inc.

Summit Sports, Inc. (“Summit Sports”) is an outdoor recreation and sports retailer which owns and operates a number of retail stores and websites. Skis.com, a division of Summit Sports, is an online retailer of ski equipment and ski apparel. Its headquarters are located at 330 Enterprise Court, Bloomfield Hills, Michigan, 48302.

k. YOOX Group, SpA.

Yoox Group, 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 website operated and licensed by Yoox Corporation, a company based in the United States and incorporated in Delaware. Its headquarters are located at 80 River Street, Penthouse North, Hoboken, New Jersey, 07030.

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 species 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 and letting them know whether the product is made from real animal fur, and if so, what type of fur.¹

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 2009 Gallup News Service poll, 35 percent of Americans find “buying and wearing clothes made of animal fur” to be “morally wrong.”²

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

¹ “Fur-Labeling Law Starts Tomorrow.” *The New York Times*. August 8, 1952.

² Saad, L., 2009. Gallup News Service. “Republicans Move to the Right on Several Moral Issues.” May 20. <http://www.gallup.com/poll/118546/republicans-veer-right-several-moral-issues.aspx>.

synthetic materials have made it increasingly difficult to distinguish between real and faux fur. Many clothing companies choose to exploit this difficulty, and confuse and mislead 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 and 2007–2008 revealed that retailers, several of whom are also named in this Petition, 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, 2007; The HSUS, Petition before the Federal Trade Commission, April 24, 2008.

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.

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

For more than a year, The HSUS has investigated numerous retailers that are or have been selling deceptively advertised and/or labeled fur-trimmed garments. Over the last several months, The HSUS determined that the practice remains widespread in the industry, as an abundance of garments are or were being falsely advertised as “faux fur” and/or mislabeled as “faux” when in fact, the fur was made with real animal fur. *See* The HSUS, *Animal Fur Sold As Faux: Investigation Results 2010–2011* (Attachment 1).

1. Barneys

In August of 2011, Barneys' website advertised a Woolrich John Rich & Brothers brand jacket as having a “faux fur trimmed hood.” *See* Barneys' Online Advertisement of Woolrich

Jacket (Attachment 2); *see also* Photograph of Woolrich Jacket (Attachment 3). Upon purchase on August 26, 2011, it was discovered that the jacket's label stated that the jacket contained "real fur" and "natural coyote fur." *See* Photographs of Woolrich Jacket Labels (Attachment 4). Macroscopic and microscopic test results commission by The HSUS to determine whether the jacket "is composed of animal or artificial fur" revealed that the jacket is "composed of *animal fur*." *See* Microtrace Analysis of Sample BNYWR082611 (Attachment 5) (emphasis added).

2. Beyond the Rack

In October of 2011, Beyond the Rack advertised a Treasure Rock brand jacket as having a "[r]emovable hood with faux fur trim." *See* Beyond the Rack's Online Advertisement of Treasure Rock Jacket (Attachment 6); *see also* Photograph of Treasure Rock Jacket (Attachment 7). Upon purchase on October 13, 2011, it was discovered that the jacket's invoice stated the item was a "[l]ong puffer with faux fur trim", *see* Photographs of Treasure Rock Invoice (Attachment 8), and that none of the product's labels identified the name of the animal from which the fur was taken. *See* Photographs of Treasure Rock Labels (Attachment 9). However, macroscopic and microscopic test results commission by The HSUS to determine whether the jacket "is composed of animal or artificial fur" revealed that the jacket is "composed of *animal fur*." *See* Microtrace Analysis of Sample BTRTR101311 (Attachment 10) (emphasis added).

3. Bop

In October of 2011, Bop's website, shopbop.com, advertised Elizabeth and James brand boots as having "faux-fur trim at the cuff." *See* Bop's Online Advertisement of Elizabeth and James Boots (Attachment 11); *see also* Photograph of Elizabeth and James Boots (Attachment 12). Upon purchase on October 31, 2011, it was discovered that none of the product's labels

identified the name of the animal that produced the fur, *see* Photographs of Elizabeth and James Labels (Attachment 13), even though macroscopic and microscopic test results commission by The HSUS to determine whether the boots are “composed of animal or artificial fur” revealed that the boots are “composed of *animal fur*.” *See* Microtrace Analysis of Sample SBEJ103111-L (Attachment 14) (emphasis added).

4. Dillard's

In February of 2011, Dillard's website advertised a Multiples brand cardigan as having a “faux-fur trim.” *See* Dillard's Online Advertisement of Multiples Cardigan (Attachment 15); *see also* Photograph of Multiples Cardigan (Attachment 16). Upon purchase on February 4, 2011, it was discovered that the cardigan's label stated “faux”, *see* Photographs of Multiples Cardigan Labels (Attachment 17), even though macroscopic and microscopic test results commission by The HSUS to determine whether the cardigan “is composed of animal hair or if it is artificial fur” revealed that the cardigan is “composed of *animal hair*.” *See* Microtrace Analysis of Sample DIMU020411-1 (Attachment 18) (emphasis added).

5. DrJays

In September of 2010, DrJays' website advertised a Crown Holder brand jacket as having a “[f]aux fur-line hood.” *See* DrJays' Online Advertisement of Crown Holder Jacket (Attachment 19); *see also* Photograph of Crown Holder Jacket (Attachment 20). Upon purchase on September 28, 2010, it was discovered that the jacket's label stated the jacket contained “Real Raccoon Fur.” *See* Photographs of Crown Holder Jacket Labels (Attachment 21). In addition, macroscopic and microscopic test results commission by The HSUS to determine whether the jacket “is composed of animal or artificial fur” revealed that the jacket is “composed of *animal fur*.” *See* Microtrace Analysis of Sample DJCH092810 (Attachment 22) (emphasis added).

In addition, in October of 2011, DrJays' website advertised a Knowles & Carter brand vest as having "[f]aux fur on exterior." See DrJays' Online Advertisement of Knowles & Carter Vest (Attachment 23); see also Photograph of Knowles & Carter Vest (Attachment 24). Upon purchase on October 19, 2011, it was discovered that none of the product's labels identified the name of the animal that produced the fur, see Photographs of Knowles & Carter Labels (Attachment 25), even though the vest's invoice stated that the vest was made with "fur", see Photograph of Knowles & Carter Vest Invoice (Attachment 26), and macroscopic and microscopic test results commission by The HSUS to determine whether the vest "is composed of animal or artificial fur" revealed that the vest is "composed of *animal fur*." See Microtrace Analysis of Sample DJKC101911 (Attachment 27) (emphasis added).

Also, in October of 2011, DrJays' website advertised a United Face brand jacket as having a "[d]etachable hood with faux fur lining." See DrJays' Online Advertisement of United Face Jacket (Attachment 28); see also Photograph of United Face Jacket (Attachment 29). Upon purchase on October 24, 2011, it was discovered that none of the product's labels identified the name of the animal that produced the fur, see Photographs of United Face Labels (Attachment 30) even though macroscopic and microscopic test results commission by The HSUS to determine whether the jacket "is composed of animal or artificial fur" revealed that the jacket is "composed of *animal fur*." See Microtrace Analysis of Sample DJUF102411 (Attachment 31) (emphasis added).

6. Eminent

In August of 2011, Eminent advertised Australia Luxe boots as having a "[f]aux fur trim." See Eminent's Online Advertisement of Australia Luxe Boots (Attachment 32); see also Photograph of Australia Luxe Boots (Attachment 33). Upon purchase on August 18, 2011, it

was discovered that none of the product's labels identified the name of the animal that produced the fur, *see* Photographs of Australia Luxe Boots Labels (Attachment 34), even though macroscopic and microscopic test results commission by The HSUS to determine whether the boots are "composed of animal or artificial fur" revealed that the boots are "composed of *animal fur*." *See* Microtrace Analysis of Sample RCAL081811-L (Attachment 35) (emphasis added).

In October of 2011, Eminent's website advertised a Marc by Marc Jacobs brand jacket as having a "[f]aux fur trimmed hood." *See* Eminent's Online Advertisement of Marc by Marc Jacobs Jacket (Attachment 36); *see also* Photograph of Marc by Marc Jacobs Jacket (Attachment 37). However, upon purchase on October 18, 2011, it was discovered that the jacket's label stated the jacket contained "100% natural real coyote fur trim." *See* Photographs of Marc by Marc Jacobs Jacket Labels (Attachment 38). In addition, macroscopic and microscopic test results commission by The HSUS to determine whether the jacket "is composed of animal or artificial fur" revealed that the jacket is "composed of *animal fur*." *See* Microtrace Analysis of Sample RCMJ101811 (Attachment 39) (emphasis added).

7. Gilt

In June of 2010, Gilt's website advertised a Paul and Joe Homme brand jackets as having a "[r]emovable snap-off hood with faux fur trim." *See* Gilt's Online Advertisement of Paul and Joe Homme Jacket (Attachment 40); *see also* Photograph of Paul and Joe Homme Jacket (Attachment 41). However, upon purchase on June 16 2010, it was discovered that the jacket's label stated that the jacket contained "Raccoon fur." *See* Photographs of Paul and Joe Homme Jacket Labels (Attachment 42). In addition, macroscopic and microscopic test results commission by The HSUS to determine whether the jacket "is composed of animal hair or if it is

artificial fur” revealed that the jacket is “composed of *animal hair*.” See Microtrace Analysis of Sample GGPJ061610-1 (Attachment 43) (emphasis added).

In January of 2011 Gilt’s website advertised a General Idea brand jacket as having an “[o]ptional button drawstring hood with faux fur lining.” See Gilt’s Online Advertisement of General Idea Jacket (Attachment 44); see also Photograph of General Idea Jacket (Attachment 45). However, upon purchase on January 14, 2011, it was discovered that the jacket’s label was in Korean only. See Photographs of General Idea Jacket Labels (Attachment 46). Macroscopic and microscopic test results commission by The HSUS to determine whether the jacket “is composed of animal hair or if it is artificial fur” revealed that the jacket is “composed of *animal hair*.” See Microtrace Analysis of Sample GGGI011411-3 (Attachment 47) (emphasis added).

8. Neiman Marcus

In August of 2011, Neiman Marcus advertised Stewart Weitzman brand flats as having a “[f]aux fur (cotton/viscose) pom on round toe.” See Neiman Marcus’ Online Advertisement of Stewart Weitzman Flats (Attachment 48); see also Photograph of Stewart Weitzman Flats (Attachment 49). Upon purchase on August 17, 2011, it was discovered that the product was not labeled with any information regarding the fur on the shoes. See Photographs of Stewart Weitzman Flats Labels (Attachment 50). However, macroscopic and microscopic test results commission by The HSUS to determine whether the flats are “composed of animal or artificial fur” revealed that the flats are “composed of *animal fur*.” See Microtrace Analysis of Sample NMSW081711-L (Attachment 51) (emphasis added).

9. Ssense

In October of 2011, Ssense advertised a Mackage brand jacket as having “[f]aux fur trim.” See Ssense’s Online Advertisement of Mackage Jacket (Attachment 52); see also

Photograph of Mackage Jacket (Attachment 53). However, upon purchase on October 31, 2011, it was discovered that the jacket's label stated that the jacket contained "Asiatic raccoon." See Photographs of Mackage Jacket Labels (Attachment 54). In addition macroscopic and microscopic test results commission by The HSUS to determine whether the jacket "is composed of animal or artificial fur" revealed that the jacket is "composed of *animal fur*." See Microtrace Analysis of Sample SSMA103111 (Attachment 55) (emphasis added).

10. Summit Sports

In August of 2011, Summit Sport's Ski.com website advertised Parajumpers brand jacket as having "faux fur as a warmth factor, but also for a fashionable touch." See Summit's Online Advertisement of Parajumpers Jacket (Attachment 56); see also Photograph of Parajumpers Jacket (Attachment 57). However, upon purchase on August 16 2011, it was discovered that the jacket's label stated that the jacket contained "faux fur" and "real fur." See Photographs of Parajumpers Jacket Labels (Attachment 58). In addition macroscopic and microscopic test results commission by The HSUS to determine whether a portion of the jacket "is composed of animal or artificial fur" revealed that it is "composed of *animal fur*." See Microtrace Analysis of Sample SKPJ081611 (Attachment 59) (emphasis added).

11. Yoox

In August of 2011, Yoox advertised a Mark and James by Badgley Mischka brand cardigan as being made with "faux fur." See Yoox's Online Advertisement of Mark and James Cardigan (Attachment 60); see also Photograph of Mark and James Cardigan (Attachment 61). Upon purchase on October 24, 2011, it was discovered that product was not labeled with the name of the animal that produced the fur, see Photographs Mark and James Labels (Attachment 62), even though macroscopic and microscopic test results commissioned by The HSUS to

determine whether the cardigan was made of “animal or artificial fur” revealed that the cardigan “is composed of *animal fur*.” See Analysis of Sample YXMJ102411-B (Attachment 63) (emphasis added).

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. *See also* The HSUS, *Investigation Results 2010–2011* (Attachment 1).

Table 1: Summary of 2010–2011 Investigation

Retailer	Brand	Advertised	Labeled	Tested
Barneys	Woolrich	Faux Fur	Real Fur and Coyote Fur	Animal fur
Beyond the Rack	Treasure Rock	Faux fur	No information regarding fur trim on label	Animal fur
Bop	Elizabeth and James	Faux-fur	No information regarding fur trim on label	Animal fur
Dillard’s	Multiples	Faux-Fur	Faux	Animal fur
DrJays	Crown Holder	Faux fur-lined hood	Real raccoon	Animal fur
DrJays	Knoles & Carter	Faux fur on exterior	No information regarding fur trim on label	Animal fur

DrJays	United Face	Detachable hood with faux fur lining	No information regarding fur trim on label	Animal fur
Eminent	Australia Luxe	Faux Fur	No information regarding fur trim on label	Animal fur
Eminent	Marc by Marc Jacobs	Faux Fur trimmed hood	Real coyote fur trim	Animal fur
Gilt	Paul and Joe Homme	Faux fur trim	Raccoon fur	Animal fur
Gilt	General Idea	Faux fur lining	Label in Korean	Animal fur
Neiman Marcus	Stuart Weitzman	Faux Fur	No label	Animal fur
Ssense	Mackage	Faux Fur	Asiatic Raccoon	Animal fur
Summit	Parajumpers	Includes faux fur	Real Fur and Faux Fur	Animal fur and faux fur
Yoox	Mark and James	Faux Fur	No information regarding fur trim on label	Animal fur

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 they are, in fact, derived from real animal fur 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. . . *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, “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. . . ;*

(2) does not show that the fur is used fur or that the fur product contains used fur, when such is the fact;

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

(4) does not show that the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact;

(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, each of the Respondents—Barneys, Beyond the Rack, Bop, Dillard’s, DrJays, Eminent, Gilt, Neiman Marcus, Ssense, Summit Sports, and Yoox—advertised certain garments as “faux fur” on their websites, when in fact the fur products were derived from real animal fur.

Such advertising 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 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 faux fur when the fur is actually derived from an 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*. . . *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 the garments Respondent Dillard’s is or has recently been selling as “faux” are also separately labeled as “faux”, rather than the name of the animal from which the fur is actually derived, such garments “shall be considered to be misbranded” in violation of the FPLA. *Id.* Specifically, these garments are misbranded because they are “falsely or deceptively labeled or otherwise falsely or deceptively identified,” *id.* § 69b(1), and fail to “affix[] to the fur product a label showing in words and figures plainly legible. . . the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur. . .” *Id.* § 69b(2).³

In addition, because that garments that Respondents Beyond the Rack, Bop, DrJays,⁴ Eminent, Neiman Marcus, Summit, and Yoox are or have recently been selling as “faux” are either unlabeled or contain labels with no information regarding the fur used to make the products, 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(s) of the animals(s) used to make the fur, whether the fur is used, bleached, artificially colored, or comprised of

³ The “Exempted Fur Products” regulations, currently still codified at 16 C.F.R. § 301.39, generally exempted fur products if the value of the fur trim on the garments did not exceed \$150. However, the Truth in Fur Labeling Act, Pub.L. 111-313, codified at 15 U.S.C. § 69(d), eliminated the Commission’s authority to exempt fur products of relatively small quantity or value from the requirements of the FPLA. *See* 76 Fed. Reg. 13,550 (March 14, 2011) (describing the effects of the Truth in Fur Labeling Act). Accordingly, there is no longer any legal basis for the regulations at 16 C.F.R. § 301.39. *See, id.* To the extent they carry any force with respect to the particular garments at issue in this Petition, they are inapplicable to DrJays’ Knowles & Carter Vest and Dillard’s Multiples Cardigan because the exemption was *never* “applicable: . . . (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). DrJays and Dillard’s both deceptively advertised their respective products as being made with faux fur, even though they contained real animal fur. *Id.* § 301.39(a)(2), (3).

⁴ While the label of the Crown Holder Jacket advertised on DrJays’ website states the product contains “Real Raccoon Fur”, the labels of the other two products advertised on DrJays’ website at issue in this Petition—the Knowles & Carter brand vest and the United Face brand jacket—do not contain any information regarding the fur used to make the product.

waste parts, the identification number of the manufacturer, and the country of origin of the imported fur. *Id.*

Finally, because one of the garments Gilt is or has recently been selling as “faux” is labeled in the Korean language only, the product “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 name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur” and the other information required in Section 4 of the FPLA. *Id.* § 69b(2) (emphasis added); *see also, id.* § 69e (the names used in the Fur Products Name Guide “shall be the true *English* names for the animals in question) (emphasis added); and 16 C.F.R. § 301.3 (“[a]ll information required under the [FPLA and its implementing] regulations to appear on labels. . . shall be set out in the *English language*. If labels . . . contain any of the required information in a language other than English, all of the required information shall appear also in the *English language*”) (emphasis added).

These violations of Sections 3(a) and 4 of the FPLA are also clear and unequivocal and also 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,



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