

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

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NOV 24 2008
Superior Court of the
District of Columbia
Washington, D.C.

**THE HUMANE SOCIETY OF THE
UNITED STATES**

2100 L Street, NW
Washington, DC 20037

Plaintiff,

v.

CIVIL ACTION NO. 0008285-08

**ANDREW & SUZANNE COMPANY,
INC. d/b/a ANDREW MARC**

570 Seventh Avenue, Floor 2
New York, NY 10018

DILLARD'S, INC.

1600 Cantrell Road
Little Rock, AR 72201

LORD & TAYLOR, LLC

424 Fifth Avenue
New York, NY 10018

MACY'S, INC.

7 West Seventh Street
Cincinnati, OH 45202

NEIMAN MARCUS GROUP, INC.

One Marcus Square
1618 Main Street
Dallas, TX 75201

SAKS INCORPORATED

12 East 49th Street
New York, NY 10017

Defendants.

COMPLAINT

**(Action Pursuant to the District of Columbia Consumer Protection
Procedures Act for Injunctive and Declaratory Relief; With Jury Demand)**

INTRODUCTION

Plaintiff The Humane Society of the United States ("The HSUS"), in its own and in a representative capacity, on behalf of all its members, alleges unlawful trade practices pursuant to the District of Columbia Consumer Protection Procedures Act ("CPPA"), D.C. CODE ANN. § 28-3901 *et seq.*, and files this Complaint with jury demand. This action for statutory penalties and injunctive relief arises from Defendants' marketing and sale in the District of Columbia of falsely advertised and/or falsely labeled fur-trimmed garments in violation of the CPPA, the federal Fur Products Labeling Act ("FPLA"), 15 U.S.C. § 69 *et seq.*, and the Federal Trade Commission Act ("FTCA"), 15 U.S.C. § 41 *et seq.*

As described herein, Defendants have been manufacturing, distributing, marketing, and selling fur-trimmed garments advertised and/or labeled as "faux fur," when they are, in fact, derived from real animal fur. Defendants have also been manufacturing, distributing, marketing, and selling fur-trimmed garments advertised and/or labeled as raccoon, coyote, or rabbit fur, when, in fact, they are made from the wholly distinct species of raccoon dog – a member of the canine family. 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.

Accordingly, Defendants' deceptive advertising and labeling practices constitute an unlawful trade practice and therefore violate the CPPA. D.C. CODE ANN. § 28-3904(a), (d), (e), (f) ("It shall be a violation of this chapter, whether or not

any consumer is in fact misled, deceived or damaged thereby, for any person to: (a) represent that goods or services have . . . characteristics . . . that they do not have; . . . (d) represent that goods or services are of particular standard, quality, grade, style, or model, if in fact they are of another; (e) misrepresent as to a material fact which has a tendency to mislead; . . . [or] (f) fail to state a material fact if such failure tends to mislead”).

Such deceptive advertising and labeling also violates the FPLA and the FTCA, and therefore constitutes an unlawful trade practice under the CPPA. 15 U.S.C. § 69a(a) (“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 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.*)”); D.C. CODE ANN. § 28-3904(x) (unlawful for any person to “sell consumer goods in a condition or manner not consistent with that warranted by . . . operation or requirement of federal law”).

All such statutory violations are actionable by way of the cause of action available to organizational plaintiffs, such as The Humane Society of the United States, under section 28-3905(k)(1) of the CPPA. D.C. CODE ANN. § 28-3905(k)(1).

JURISDICTION AND VENUE

1. The Court has subject matter jurisdiction over statutory claims in this matter pursuant to D.C. CODE ANN. § 28-3905(k)(1). The Court has personal

jurisdiction over Defendants pursuant to D.C. CODE ANN. §§ 13-334(a) and 13-423(a)(1), because the allegations and claims for relief herein arise from Defendants' "transaction of business" and "doing business" in the District of Columbia.

2. As a result of Defendants' purposeful and substantial advertising, marketing, distribution, and selling of fur-trimmed garments in the District of Columbia – either through online websites and/or retail stores that are located in the District of Columbia – Defendants have established sufficient contacts with the District of Columbia such that it is reasonable for Defendants to reasonably anticipate being subject to action in the courts of the District of Columbia.

3. Venue is proper in the District of Columbia because Plaintiff The HSUS's headquarters are in the District of Columbia and this action relates to Defendants' activities within the District of Columbia.

THE PARTIES

4. Plaintiff The HSUS is the nation's largest animal protection organization with over 29,000 members and constituents in the District of Columbia and over 10.5 million members and constituents nationwide. The HSUS is a non-profit organization headquartered in the District of Columbia and since 1954 has been working to protect all animals through education, investigation, litigation, legislation, advocacy, and field work. In particular, The HSUS's Fur-Free Campaign works to end the killing of animals for fur and fur trim by promoting humane alternatives to animal fur. The false and deceptive advertising and labeling described herein injures The HSUS and its members by misleading fur-free

consumers into buying real fur products and increasing consumer confusion over the type and origin of fur-trimmed garments sold at retail, thereby injuring The HSUS's organizational mission and its members, including those that reside in the District of Columbia, as described further below.

5. Defendant Andrew & Suzanne Company, Inc., doing business as "Andrew Marc," is incorporated in the State of New York and is headquartered in New York, NY. As of February 11, 2008, Andrew & Suzanne Company, Inc. operates as a wholly owned subsidiary of G-III Leather Fashions, Inc. Andrew Marc is an American design company that designs, manufactures, and distributes upscale clothing under the brand names Andrew Marc and Marc New York. Defendant Andrew Marc regularly conducts business in the District of Columbia by distributing garments that are sold to consumers at retail stores throughout the District of Columbia, including Bloomingdale's (a retail division of Macy's, Inc.), Lord & Taylor, Neiman Marcus, and Saks Fifth Avenue. Andrew Marc also markets and sells its collection directly to consumers in the District of Columbia through its website, www.andrewmarc.com.

6. Defendant Dillard's, Inc. ("Dillard's") is incorporated in the State of Delaware and its headquarters are located in Little Rock, AR. Dillard's operates approximately 330 retail department stores located primarily in the southeastern, southwestern, and midwestern areas of the United States and offers a mix of name brand and private label merchandise, including house brand Preston & York. Defendant Dillard's regularly conducts business in the District of Columbia by

marketing and selling its merchandise directly to consumers in the District of Columbia through its website, www.dillards.com.

7. Defendant Lord & Taylor, LLC ("Lord & Taylor") is a limited liability corporation incorporated in the State of Delaware and headquartered in New York, NY. Lord & Taylor is an upscale department store retailer that operates 47 retail locations and sells luxury apparel, jewelry, and accessories, including designer brands Andrew Marc and Marc New York. Lord & Taylor regularly conducts business in the District of Columbia by selling and marketing merchandise to D.C. residents and consumers through its department store at 5255 Western Avenue, Washington, DC 20015, and at nearby stores located in Alexandria, VA, McLean, VA, and Kensington, MD. Defendant Lord & Taylor also markets and sells its merchandise directly to consumers in the District of Columbia through its online store, www.lordandtaylor.com. Lord & Taylor also frequently advertises to residents and consumers in the District of Columbia in *The Washington Post*, primarily using "run of paper" ("ROP") display advertising, which allows the newspaper to place Lord & Taylor ads anywhere within the paper. For example, several Lord & Taylor advertisements were displayed in the recent November 16, 2008 print edition of *The Washington Post*.

8. Defendant Macy's, Inc. ("Macy's") is incorporated in the State of Delaware and its principal headquarters are located in Cincinnati, OH. Macy's is one of America's largest retailers, operating 40 Bloomingdale's department stores and more than 810 Macy's department stores. Defendant Macy's regularly conducts

business in the District of Columbia by selling merchandise at several retail stores throughout the greater D.C. metropolitan area, including a Macy's department store located in downtown Washington, DC at 1201 G Street, NW, and nearby stores in Arlington, VA, McLean, VA, and Bethesda, MD. Macy's also regularly conducts business in the District of Columbia by selling and marketing merchandise to D.C. residents and consumers at Bloomingdale's department stores located in nearby Chevy Chase, MD – located just over the District border at 5300 Western Avenue – McLean, VA and Kensington, MD. Defendant Macy's also markets and sells its merchandise directly to consumers in the District of Columbia through its online stores, www.macys.com and www.bloomingdales.com, and a direct mail catalogue, Bloomingdale's By Mail. Macy's, Inc. also frequently advertises to residents and consumers in the District of Columbia in *The Washington Post*, primarily using ROP advertising to display both Macy's and Bloomingdale's advertisements. For example, several Macy's advertisements were displayed in the recent November 16, 2008 print edition of *The Washington Post*

9. Defendant Neiman Marcus Group, Inc. ("Neiman Marcus") is incorporated in the State of Delaware and headquartered in Dallas, TX. Neiman Marcus is a luxury retailer that operates 39 flagship stores in the United States. It sells upscale apparel, jewelry, clothing accessories, and home goods, including designer brands Andrew Marc and Marc New York. Neiman Marcus regularly conducts business in the District of Columbia by selling and marketing merchandise to D.C. residents and consumers through its department store at 5300 Wisconsin

Avenue, NW, Washington, DC 20015, and at another nearby store in McLean, VA. Defendant Neiman Marcus also markets and sells its merchandise directly to consumers in the District of Columbia through its website, www.neimanmarcus.com, and a direct mail print catalog. Neiman Marcus also frequently advertises to residents and consumers in the District of Columbia in *The Washington Post*, primarily using ROP display advertising.

10. Defendant Saks Incorporated, incorporated in Delaware and headquartered in New York, NY, is a luxury retailer that sells upscale clothing, accessories, jewelry, and housewares – including designer brands Andrew Marc and Marc New York – at over 54 “Saks Fifth Avenue” department stores. Saks Fifth Avenue regularly conducts business in the District of Columbia by selling and marketing merchandise to D.C. residents and consumers through its retail department store located at 5300 Wisconsin Avenue, NW, Washington, DC 20015, and at other stores located in nearby McLean, VA, Woodbridge, VA, and Chevy Chase, MD. Defendant Saks Fifth Avenue also markets and sells its merchandise directly to consumers in the District of Columbia through its online store, www.saks.com. Saks Fifth Avenue also frequently advertises to residents and consumers in the District of Columbia in *The Washington Post*, primarily using ROP display advertising. For example, a recent Saks Fifth Avenue advertisement was displayed in the November 16, 2008 print edition of *The Washington Post*.

LEGAL FRAMEWORK

A. District of Columbia Consumer Protection Procedures Act

11. The CPPA provides:

A person, whether acting for the interests of itself, its members, or the general public, may bring an action under this chapter in the Superior Court of the District of Columbia seeking relief from the use by any person of a trade practice in violation of the law of the District of Columbia

D.C. CODE. ANN. § 28-3905(k)(1).

12. It is a violation of District of Columbia law, and therefore an unlawful trade practice under the CPPA, *id.*, “*whether or not any consumer is in fact misled, deceived or damaged thereby,*” for any person to:

(a) represent that goods or services have a source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have;

* * *

(d) represent that goods or services are of particular standard, quality, grade, style, or model, if in fact they are of another;

(e) misrepresent as to a material fact which has a tendency to mislead;

(f) fail to state a material fact if such failure tends to mislead; [or]

* * *

(x) sell consumer goods in a condition or manner not consistent with that warranted by . . . operation or requirement of *federal law.*”

Id. § 28-3904 (emphasis added).

13. Additionally, “the CPPA’s extensive enforcement mechanisms apply not only to the unlawful trade practices proscribed by § 28-3904, but to all other

statutory and common law prohibitions.” *Osbourne v. Capital City Mortgage Corp.*, 727 A.2d 322, 325-26 (D.C. 1999).

14. The CPPA allows for treble damages, or \$1,500 per violation, whichever is greater, as well as reasonable attorney’s fees, punitive damages, an injunction against the unlawful trade practice, “additional relief as may be necessary to restore the consumer money or property . . . which may have been acquired by means of the unlawful trade practice,” and “any other relief the court deems proper.” D.C. CODE ANN. § 28-3905(k)(1).

B. Federal Fur Products Labeling Act

15. Section 3(a) of the federal Fur Products Labeling Act (“FPLA”) provides:

The 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 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) (emphasis added).

16. Pursuant to section 4 of the FPLA, “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.

17. Section 5(a) of the FPLA also provides that “a fur product 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).

C. Federal Trade Commission Act

18. The FTCA declares that “[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful.” 15 U.S.C. § 45(a)(1).

19. As described above, “[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 product which is misbranded or falsely or deceptively advertised or invoiced” is a violation of the FPLA and is therefore “unlawful and shall be an unfair method of competition, and an unfair, and deceptive act or practice, in commerce under the [FTCA].” *Id.* § 69a(a).

FACTS GIVING RISE TO PLAINTIFF’S CLAIMS FOR RELIEF

A. The Inhumane Fur Trade

20. 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>. 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 are raised inhumanely for their fur. *Id.* at 5.

21. 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.*

22. A significant amount of China's fur is derived from the raccoon dog species, as it is estimated that there are over 1.5 million raccoon dogs in China being raised for their fur. *Id.* at 3. Raccoon dogs are a member of the dog family whose fur resembles the common raccoon, even though raccoon dogs are an entirely different species from the common raccoon (*Procyon lotor*). The raccoon dog's scientific name is *Nyctereutes procyonoides* and it 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 accessed November 18, 2008).

23. Although the FPLA's Name Guide requires raccoon dog fur products to be labeled as "Asiatic Raccoon," 16 C.F.R. § 301.0, in light of the stigma attached to fur products derived from members of the canine family and the growing consumer demand for faux fur, many clothing companies elect to confuse and mislead consumers by marketing and selling raccoon dog-trimmed garments as either faux fur or common raccoon fur. See The HSUS, WHAT IS THAT THEY'RE WEARING 4 (1998) (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").

24. In addition to China's exploitation of raccoon dogs, 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). 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 false advertising and mislabeling of fur garments in the fashion industry.

B. Defendants' Deceptive Advertising and/or Labeling of Real Fur Products, Including Canine Fur, as Faux Fur

25. In September 2007, Bloomingdale's, a retail division of Defendant Macy's, Inc., advertised an Aqua house brand "faux fur lined" jacket on its online website, www.bloomingdales.com. However, after purchase and receipt by an

HSUS representative, it was discovered that the garment's labels stated "rabbit fur," even though it was advertised as faux. On December 19, 2007, mass spectrometry tests confirmed that this jacket, advertised as faux fur, was, in fact, trimmed in genuine rabbit fur.

26. In September 2008, it was again discovered that Bloomingdale's, a retail division of Defendant Macy's, Inc., advertised a Marc New York brand fur-trimmed jacket as "faux fur" on its online website. However, upon purchase and receipt by an HSUS representative and resident of the District of the Columbia, it was discovered that the garment, advertised as faux fur, was labeled as genuine "Asiatic raccoon" fur – the FPLA Name Guide term for raccoon dog, which is a member of the canine family.

27. In November 2007, Defendant Dillard's advertised a Preston & York house brand jacket as having "removable faux-fur trim" on its online website, www.dillards.com. However, after purchase and receipt by an HSUS representative, it was discovered that the garment, advertised as faux fur, contained two conflicting labels – an external hangtag identifying the fur trim as "genuine fox fur" and an internal label identifying the fur trim as "genuine natural raccoon." On December 14, 2007, mass spectrometry tests confirmed that this coat, advertised as faux but labeled as genuine fox and raccoon fur, was actually trimmed with genuine raccoon fur.

28. In November 2007, Defendant Neiman Marcus, through their online website, www.neimanmarcus.com, advertised an Adam+Eve brand jacket as having

a "faux fur-trim collar." However, upon purchase and receipt by an HSUS representative, it was discovered that the garment's label identified the fur trim as "100% rabbit fur" even though it was advertised as faux fur. On December 19, 2007, mass spectrometry tests reported that this garment, advertised as faux fur, was actually trimmed with genuine rabbit fur.

29. In December 2007, Defendant Saks Fifth Avenue's website, www.saksfifthavenue.com, advertised a Burberry brand coat as having a "detachable faux fur collar." However, after purchase by an HSUS representative, it was discovered that not only was the coat unlabeled, mass spectrometry testing conducted on December 19, 2007, confirmed that this jacket, advertised as faux fur, tested positive for genuine rabbit fur.

30. In November 2007, an HSUS representative purchased an Andrew Marc brand fur-trimmed jacket from Defendant Neiman Marcus' retail department store at Tysons Corner Center in McLean, VA, that was labeled as "trim: polyester 100%." However, on December 14, 2007, mass spectrometry tests reported that this garment, labeled as containing fake polyester fur, was actually trimmed with genuine raccoon dog fur.

31. In December 2007, an HSUS representative purchased a Marc New York brand garment from Defendant Lord & Taylor's retail department store at the White Flint Mall in Kensington, MD. This fur-trimmed jacket was similarly labeled as "trim: polyester 100%." However, on December 19, 2007, mass spectrometry

tests confirmed that this garment, labeled as faux polyester fur, instead contained both genuine rabbit and raccoon dog fur.

C. Defendants' Deceptive Advertising and/or Labeling of Canine Fur Products as Raccoon, Fox, or Rabbit

32. In October 2008, Defendant Andrew Marc advertised and sold a jacket as being trimmed in genuine "raccoon" on its website, www.andrewmarc.com. However, upon purchase and receipt by an HSUS representative and resident of the District of Columbia, it was discovered that the garment contained two conflicting labels – the first identifying the fur trim as "natural raccoon fur" but the second identifying the trim as "real Asiatic raccoon" – the FPLA Name Guide term for raccoon dog, which is a member of the canine family and a wholly distinct species from the common raccoon.

33. On November 16, 2007, Defendant Dillard's advertised a Preston & York house brand jacket as having a "genuine raccoon-trimmed collar" on its website, www.dillards.com. Upon purchase and receipt, an HSUS representative found that the garment's label also stated "trim: genuine dyed racoon [sic] fur." However, on December 14, 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 fur.

34. In November 2008, Defendant Lord & Taylor advertised a Marc New York brand fur-trimmed jacket as genuine common "raccoon." However, upon purchase and receipt by an HSUS representative and resident of the District of Columbia, it was discovered that the garment, advertised as common raccoon, was

instead labeled as “Asiatic raccoon” – the FPLA Name Guide term for raccoon dog, which is a member of the canine family and a wholly distinct species from the common raccoon.

35. In October 2008, Defendant Neiman Marcus advertised a Weekend Max Mara brand coat on its website, www.neimanmarcus.com, as being trimmed in “fox” fur. However, upon purchase and receipt by an HSUS representative and resident of the District of Columbia, it was discovered that the garment, advertised as fox fur, was instead labeled as “Asiatic raccoon” – the FPLA Name Guide term for raccoon dog, which is a member of the canine family.

36. In October 2008, Defendant Saks Fifth Avenue’s website, www.saksfifthavenue.com, advertised a Weekend Max Mara brand jacket as being trimmed in “fox” fur. However, upon purchase and receipt by an HSUS representative and resident of the District of Columbia, it was discovered the garment contained two conflicting labels – an external hang tag identifying the trim as “faux fur” and an internal label identifying the trim as “Asiatic raccoon,” which is the FPLA Name Guide term for raccoon dog.

D. Harm to District of Columbia Consumers and Plaintiff’s Members

37. Plaintiff has purchased Defendants’ fur-trimmed garments that are advertised and sold to residents and consumers in the District of Columbia through online websites and/or retail stores that are located in or near the District of Columbia.

38. On information and belief, based on representations made by Defendants in their advertising or labeling, consumers in the District of Columbia believe that Defendants' fur-trimmed garments are "faux fur," when the fur is, in fact, derived from real animal fur, such as raccoon dog fur, a member of the canine family.

39. On information and belief, based on representations made by Defendants in their advertising or labeling, consumers in the District of Columbia believe that Defendants' fur-trimmed garments are derived from one particular animal – such as raccoon, fox, or rabbit – when, in fact, they are derived from raccoon dog, a member of the canine family.

40. On information and belief, consumers in the District of Columbia have purchased clothing – in reasonable reliance on Defendants' deceptive advertising and labeling – that they otherwise would not have purchased.

41. Consumer surveys show that consumers consider animal welfare when making purchasing decisions and are often willing to switch to animal-free products. For example, according to recently published Gallup poll data, a sizeable and significant percentage of Americans find that buying or wearing animal fur is "morally wrong."

42. Defendants' advertising – particularly with respect to "faux fur" advertisements – is directed at and targets the specific class of consumers who are deeply concerned with the welfare of animals, such as Plaintiff's members, and who specifically attempt to buy products that are produced in a way that does not

negatively impact animal welfare, and, as such, are more vulnerable and susceptible to being misled by the representations.

43. Consumers are unable to tell upon purchasing Defendants' garments that they have been deceived, because it is extremely difficult to differentiate faux fur from real animal fur or raccoon dog fur from common raccoon fur, fox fur, or rabbit fur. The result is that consumers – especially humane-conscious and fur-free consumers, such as Plaintiff's members – will continue to be deceived and induced to purchase Defendants' garments as long as the false advertisements and labels continue.

44. Most consumers, including Plaintiff's members, do not find out that they have been deceived by falsely advertised or falsely labeled fur-trimmed garments until they learn about the actual type of fur from which the trim is derived from third party sources, such as advocacy groups like Plaintiff and the media.

45. On information and belief, District of Columbia residents and consumers have been and will continue to be injured by Defendants' conduct because they purchase fur-trimmed clothing that Defendants manufacture, distribute, sell, advertise, and label as being "faux" when, in fact, the clothing is made from real animal fur, including raccoon dog fur. As such, consumers have suffered and will continue to suffer actual and present economic damage as a result of Defendants' actions because they have expended funds to purchase garments that they otherwise would not have purchased.

46. On information and belief, District of Columbia residents and consumers have been and will continue to be injured by Defendants' conduct because they purchase fur-trimmed clothing that Defendants manufacture, distribute, sell, advertise, and label as being derived from one particular type animal fur – such as the common raccoon, fox, or rabbit – when, in fact, the garments are made from raccoon dog fur. As such, consumers have suffered and will continue to suffer actual and present economic damage as a result of Defendants' actions because they have expended funds to purchase garments that they otherwise would not have purchased.

47. Because more than 75 million fur-bearing animals are killed annually for the purpose of obtaining their pelts for fashion, The HSUS's Fur-Free Campaign works to end the killing of animals for fur and fur trim by educating consumers on the inhumane fur trade and the availability of fur-free choices. Defendants' actions impair and frustrate The HSUS's ability to pursue its goals, because Defendants' deceptive advertising and labeling requires The HSUS to divert its limited organizational and programmatic resources to combat Defendants' misleading actions by informing the public and its members about the actual type of fur that is used on Defendants' garments. These resources would otherwise be spent on programmatic and advocacy activities to prevent other cruelty to animals, in furtherance of The HSUS's goals. The HSUS's injuries will be redressed if The HSUS prevails in this action, because if Defendants cease their deceptive advertising and labeling, The HSUS will not be required to divert its resources to

combat such misleading advertising and labeling by having to inform the public about the actual type of fur that is used on Defendants' garments.

48. Additionally, The HSUS's members are particularly susceptible to being misled by Defendants' deceptive advertising and labeling because they are deeply concerned with the welfare of animals and seek out products that are produced in a way that does not negatively impact welfare. The HSUS members who seek out fur-free and humane conscious garments and who live in the District of Columbia have been and will continue to be injured by Defendants' actions, as described in paragraphs 37-47 above. These injuries will be redressed if The HSUS prevails in this action.

PLAINTIFF'S CLAIMS FOR RELIEF

COUNT 1 – Violations of the D.C. Consumer Protection Procedures Act Based on Misrepresentations and Failure to State a Material Fact

49. Plaintiff incorporates by reference all the preceding paragraphs as fully set forth herein.

50. Plaintiff brings Claim One in its individual and representative capacity against Defendants on Plaintiff's own behalf, on behalf of its members, and on behalf of affected consumers and the general public, pursuant to section 28-3905(k)(1) of the CPPA, which provides that any "person, whether acting for the interests of itself, its members, or the general public, may bring an action under this chapter in the Superior Court of the District of Columbia seeking relief from the use by any person of a trade practice in violation of a law of the District of Columbia." D.C. CODE ANN. § 28-3905(k)(1).

51. By falsely advertising and/or falsely labeling fur products as “faux fur” when they are, in fact, derived from real animal fur, Defendants have “represent[ed] that goods . . . have a source, . . . [or] characteristic[] . . . that they do not have”; “represent[ed] that goods . . . are of particular standard, quality, grade, style, or model, if in fact they are of another”; “misrepresent[ed] as to a material fact which has a tendency to mislead”; and “fail[ed] to state a material fact if such failure tends to mislead.” D.C. CODE ANN. § 28-3904(a), (d), (e), (f).

52. In addition, by falsely advertising and/or falsely labeling fur-trimmed garments as common raccoon, fox, or rabbit fur when they are, in fact, derived from the wholly distinct species of raccoon dog – a member of the canine family – Defendants have “represent[ed] that goods . . . have a source, . . . [or] characteristic[] . . . that they do not have”; “represent[ed] that goods . . . are of particular standard, quality, grade, style, or model, if in fact they are of another”; “misrepresent[ed] as to a material fact which has a tendency to mislead”; and “fail[ed] to state a material fact if such failure tends to mislead.” D.C. CODE ANN. § 28-3904(a), (d), (e), (f).

53. These unlawful trade practices have caused and will continue to cause Plaintiff injuries as described in paragraphs 37-48.

COUNT 2 – Violations of the D.C. Consumer Protection Procedures Act
Based on Violations of the Federal Fur Products Labeling Act
and Federal Trade Commission Act

54. Plaintiff hereby incorporates by reference all the preceding paragraphs as if fully set forth herein.

55. Plaintiff brings Claim Two in its individual and representative capacity against Defendants on Plaintiff's own behalf, on behalf of its members, and on behalf of affected consumers and the general public, pursuant to section 28-3905(k)(1) of the CPPA, which provides that any "person, whether acting for the interests of itself, its members, or the general public, may bring an action under this chapter in the Superior Court of the District of Columbia seeking relief from the use by any person of a trade practice in violation of a law of the District of Columbia." D.C. CODE ANN. § 28-3905(k)(1).

56. It is unlawful under the CPPA to "sell consumer goods in a condition or manner not consistent with that warranted by . . . operation or requirement of federal law." *Id.* § 28-3904(x).

57. The federal Fur Products Labeling Act and Federal Trade Commission Act prohibit false or deceptive advertising and labeling. Pursuant to section 3(a) of the FLPA, "[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 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); *see also id.* § 45(a)(1) ("[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful").

58. Section 5(a) of the FPLA provides that “a fur product or fur shall be considered to be falsely or deceptively advertised if any advertisement, representation, public announcement, or notice which is intended to aid, promote, or assist directly or indirectly in the sale or offering for sale of such fur product or fur – (1) does not show the name or names . . . of the animal or animals that produced the fur . . .;” “(5) contains 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, indirectly or by implication, with respect to such fur product or fur;” or “(6) does not show the name of the country or origin of any imported furs or those contained in a fur product.” *Id.* § 69c(a).

59. Section 4 of the FLPA further provides that “fur product shall be considered to be misbranded” if it is (1) “falsely or deceptively labeled”; (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 (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.

60. In the instant case, a number of the Defendants sold fur-trimmed garments that were deceptively advertised. For instance, Macy’s, Inc. (through its retail division Bloomingdale’s), Dillard’s, Neiman Marcus, and Saks Fifth Avenue advertised and sold fur-trimmed garments as “faux fur” on their online stores, rather than correctly advertising the garments as genuine rabbit, genuine raccoon,

or genuine raccoon dog fur, which are the actual “name or names . . . of the animal or animals that produced the fur.” *Id.* § 69c(a)(1). In addition, Andrew Marc, Dillard’s, Lord & Taylor, Neiman Marcus, and Saks Fifth Avenue advertised and sold fur-trimmed garments as either common raccoon or fox fur, rather than correctly advertising the garments as raccoon dog – a member of the canine family and a wholly distinct species from common raccoon – which is “the name . . . of the animal . . . that produced the fur.” *Id.* § 69c(a)(1). Therefore, these garments “shall be considered to be falsely or deceptively advertised” in violation of the FPLA. *Id.* § 69c(a); *see also id.* § 69a(a) (“[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 and deceptive act or practice, in commerce under the Federal Trade Commission Act (15 U.S.C. § 41 *et seq.*)”

61. A number of the Defendants also manufactured, distributed, or sold fur-trimmed garments that were falsely labeled. For instance, Andrew Marc, Dillard’s, Lord & Taylor, Neiman Marcus, and Saks Fifth Avenue manufactured, distributed, or sold garments that were labeled as either faux fur or common raccoon or fox fur when, in fact, these fur-trimmed garments were derived from real raccoon dog – a member of the canine family and a wholly distinct species from the common raccoon. Therefore, these garments “shall be considered to be misbranded,” *id.* § 69b, in violation of the FPLA because they are “falsely or

deceptively labeled or otherwise falsely or deceptively identified,” *id.* § 69b(1), and “set[] forth the name . . . of [an] animal other than name [of the animal that produced the fur],” *id.* § 69b(3). *See also id.* § 69a(a) (“[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 and deceptive act or practice, in commerce under the Federal Trade Commission Act (15 U.S.C. § 41 *et seq.*)”.

62. Accordingly, these Defendants have violated the CPPA because it is unlawful to “sell consumer goods in a condition or manner not consistent with that warranted by . . . operation or requirement of federal law.” D.C. CODE ANN. § 28-3904(x).

63. These unlawful trade practices have caused and will continue to cause Plaintiff injuries as described in paragraphs 37-48.

RELIEF REQUESTED

WHEREFORE, Plaintiff, individually and in its representative capacity, requests judgment and the following relief:

A. Declaratory judgment that each and every one of Defendant’s acts alleged above violates the D.C. Consumer Protection Procedures Act, D.C. CODE ANN. § 28-3904(a), (d), (e), (f), (x);

B. All appropriate injunctive relief, including an Order that Defendants permanently cease and desist from unlawful trade practices, namely the

manufacturing, distributing, selling, and marketing of falsely advertised and falsely labeled fur and fur-trimmed garments, *id.* § 28-3905(k)(1)(D);

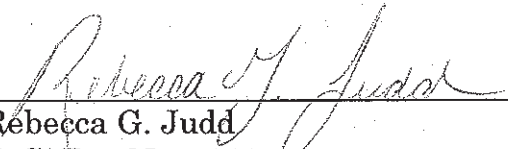
C. Additional relief as may be necessary to restore the consumer the money or property which may have been acquired by means of the unlawful trade practice, *id.* § 28-3905(k)(1)(E);

D. Reasonable attorney's fees and costs, *id.* § 28-2905(k)(1)(B); and

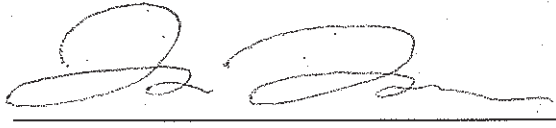
E. Such other relief as the Court deems proper, *id.* § 28-3905(k)(1)(F).

Respectfully submitted,

Dated: November 24, 2008



Rebecca G. Judd
D.C. Bar No. 486315

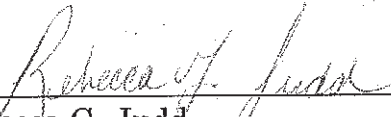


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JURY DEMAND

Plaintiff hereby demands a trial by jury of this matter.



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Counsel for Plaintiff