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By Facsimile and First Class Mail

December 11, 2006

Monroe G. Milstein
President, Chairman of the Board, and CEO
Burlington Coat Factory Warehouse Corporation
1830 Route 130
Burlington, NJ 08016

Paul C. Tang
Executive Vice President, Secretary, and General Counsel
Burlington Coat Factory Warehouse Corporation
1830 Route 130
Burlington, NJ 08016

**Re: Notice of Violations of State and Federal Consumer Protection
Laws Concerning the Deceptive Marketing of Real Fur Coats
of Questionable Chinese Origin as Humane, Synthetic Fur
Products.**

Dear Mr. Milstein and Mr. Tang:

On behalf of The Humane Society of the United States (“The HSUS”) and our nearly ten million members and constituents, I am writing to provide you notice that Burlington Coat Factory Warehouse Corporation (“Burlington”) is engaged in the illegal marketing and sale of deceptively advertised faux fur trimmed jackets that are, in fact, real fur trimmed jackets. Unless these violations are immediately remedied, The HSUS may commence litigation against Burlington to ensure that consumers are not induced into purchasing inhumane fur products by Burlington’s false representations.

Faux fur has been featured prominently on designer jackets this season, indicating a high demand from consumers. To that end, on page thirteen of Burlington’s nationally distributed “Holiday Insert 2006,” Burlington advertises “Down Jackets With Faux Fur Trim,” for the sale price of \$99.99 to \$109.99. Pictured in the advertisement is a white jacket bearing the “Baby Phat” label – a jacket that is, in fact, trimmed with real fur of questionable Chinese provenance.¹

¹ The advertisement in question is available to the public at large on Burlington’s website at burlingtoncoatfactory.com. See http://corporate.burlingtoncoatfactory.com/ads/holiday_insert_2006.pdf.

To date, individuals residing in at least four states and the District of Columbia have purchased a Baby Phat down jacket advertised as “with faux fur trim,” but have gotten real fur instead. Some of these individuals have reported seeing prominent full-color poster displays at their local Burlington outlet advertising this jacket as “Baby Phat Down Jackets with Faux Fur Trim.” Indeed, one sales clerk in Falls Church, Virginia even went so far as to offer assurances that all of Burlington’s coats are “fake fur.” Thus, it appears that Burlington is attempting to pass off its real fur jackets as fashionable “faux” fur in its national advertising, its local in-store displays, and even through the representations of its customer service agents.

The real fur jackets being marketed by Burlington as “faux” contain labels stating that they are trimmed with “Racoon [sic] Fur of China Origin” or “Genuine Coyote Fur of China Origin.” This is significant in light of the fact that, in 1998, Burlington was found to be selling fur-trimmed garments labeled as “Mongolia Dog Fur,” one of the many names used for domestic dog fur from China. In response, the U.S. Congress enacted the Dog and Cat Protection Act of 2000 to ban the importation, sale, and advertisement of any dog or cat fur product. 19 U.S.C. § 1308(b).

Among other penalties, violators of the Act can be fined up to \$10,000 for each item containing dog or cat fur. Accordingly, The HSUS plans to conduct DNA testing on these latest coats to discover if they are dog fur, and to determine whether Burlington may still be knowingly or unknowingly bringing dog fur into this country illegally.

The deceptive advertising of real fur jackets as faux fur not only causes significant consumer confusion, but also clearly violates the consumer protection laws of each of the states where these jackets have been purchased. Thus, for example, the Florida Deceptive and Unfair Trade Practices Act declares unlawful “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce,” FLA. STAT. ANN. § 501.204(1) (2006), and authorizes “anyone aggrieved” by a violation of this Act to seek declaratory relief and damages, *id.* § 501.211. Likewise, the California Unfair Competition Law prohibits “any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, *untrue or misleading advertising . . .*” CAL. BUS. & PROF. CODE § 17200 (emphasis added). Similarly, the New York Consumer Protection From Deceptive Acts and Practices Act also provides that “[f]alse advertising in the conduct of any business, trade or commerce or in the furnishing of any service in this state is hereby declared unlawful.” N.Y. GEN. BUS. LAW § 350 (2006).²

² The District of Columbia Consumer Protection Procedures Act (“DC Consumer Act”), D.C. CODE ANN. § 28-3901 *et seq.* (2001), allows individuals and organizations to bring an action in the Superior Court of the District of Columbia seeking relief from the use of unlawful trade practices. *Id.* § 28-3905(k)(1) (“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 a law of the District of Columbia . . .”). Among other prohibitions, the DC Consumer Act provides that “[i]t 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 . . . have . . . characteristics . . . that they do not have;” “(d) represent that goods . . . are of particular standard, quality, grade, style, or model, if in fact they are another;” “(e) misrepresent as to a material fact which has a tendency to mislead;” or “(x) sell consumer goods in a condition or matter not consistent with that warranted by . . . requirement of federal law.” *Id.* § 28-3904.

Burlington's deceptive advertising also violates the federal Fur Products Labeling Act, 15 U.S.C. § 69 et seq. Pursuant to section 69a(a) of that Act, "[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). The Act provides that "a fur product or fur shall be considered to be falsely or deceptively advertised if any advertisement, representation, public announcement, or notice which is intended to aid, promote, or assist directly or indirectly in the sale or offering for sale of such fur product or fur – (1) does not show the name or names . . . of the animal or animals that produced the fur . . .;" "(5) . . . contains any form of misrepresentation or deception, directly 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). Violation of this Act may result in a misdemeanor conviction, fines up to \$5,000, and other injunctive and condemnation penalties. Id. §§ 69g, 69i.

Accordingly, unless Burlington takes immediate steps to properly remedy these serious violations of state and federal law, The HSUS will have no choice but to consider all appropriate remedies, including litigation, to ensure consumers are not deceived by Burlington's false and misleading advertising. If The HSUS can be of assistance in remedying these violations, or if you have any questions, please feel free to contact me directly at (202) 955-3669.

Sincerely,

Jonathan R. Lovvorn, Esq.
Vice President, Animal Protection Litigation
The Humane Society of the United States