

Complaint.

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FEDERAL TRADE COMMISSION

v.

CHICAGO PORTRAIT COMPANY.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF
AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 840—January 26, 1923.

SYLLABUS.

Where a corporation engaged in the sale of portraits which it made from photographs, for the purpose and with the effect of aiding in the sale thereof, falsely represented to prospective customers whose business it solicited at its usual and customary prices, that said prices were much lower than those usually charged by it, greatly overstated the latter, and gave plausibility to its claim of unusual price concessions by the methods, among others, of permitting a desired customer to draw or otherwise secure a check "worth \$10.00" in trade, offering the portrait at twice the usual figure for single portraits with a second one "absolutely free" (the prospect being asked in consideration thereof to tell, "neighbors and friends who made the work"), misleadingly describing the same as "hand made," and falsely asserting that it did not advertise in farm journals, etc., as other concerns, but "decided to come right among the people and give them the benefit of the advertising money":

Held, That such misrepresentations, under the circumstances set forth, constituted an unfair method of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that the Chicago Portrait Company, hereinafter referred to as the respondent, has been and is using unfair methods of competition in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent is a corporation organized and existing under the laws of the State of Illinois, with its principal place of business in the City of Chicago, in said State.

PAR. 2. That the respondent is engaged in the business of making portraits from photographs, and selling such portraits, either with frames or without frames, and causing such portraits and frames to

be transported to the purchasers thereof, from the State of Illinois, through and into other States of the United States, and carries on such business in direct, active competition with other persons, partnerships and corporations similarly engaged. In the course of such business respondent employs about 1,300 agents who solicit orders for and sell about 600,000 such portraits annually.

PAR. 3. That respondent in the course of its business as described in paragraph 2 hereof and as an inducement to prospective customers to purchase its portraits, represents the actual values of said portraits to be much greater than they in fact are and represents the usual prices to be far in excess of the prices at which said portraits actually sell, and then offers said prospective customers pretended special prices, which are usually much less than the represented actual values and usual prices of said portraits; that such pretended special prices are made upon the claimed consideration that such prospective customers will recommend the portraits and advertise the business of respondent in the respective communities in which they live, or by inducing prospective customers to participate in a drawing for a so-called "lucky envelope" from a number of envelopes carried by agents of respondent for that purpose, the greater number of which envelopes contain coupons or trade checks which purport to entitle those drawing same to discounts from the represented usual prices of portraits sold by respondent, and such drawings are so manipulated by agents of respondent that each prospective customer receives one of said "lucky envelopes"; that the prices represented by the respondent to be the actual values and usual prices of its portraits do not indicate the true value nor actual or usual prices for said portraits; that there are portraits on the market whose actual values and usual prices are approximately the same as the pretended special prices at which respondent sells its portraits; that the prices represented by the respondent to be the usual prices of its portraits are fictitious and misleading and are calculated to and actually do mislead and deceive purchasers as to the values of said portraits and their usual selling prices and mislead and deceive them into the belief that they are obtaining said portraits at prices substantially below their usual selling prices and below their true values or worth when they buy at the pretended special prices offered by the respondent. That as a further inducement to prospective customers, respondent represents its portraits to be hand paintings, whereas in truth and in fact such portraits are not hand paintings.

PAR. 4. That respondent further, in the course of its said business, causes its agents to call on prospective customers and falsely repre-

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sent that they have not called to sell anything but to give to such prospective customers so-called tritone paintings which are represented by said agents to be of the value of \$20, or of other fictitious values. whereupon such agents request such prospective customers to furnish two photographs and upon the receipt of same, such agents give to such customers what purports to be a trade check, which they offer to accept at its pretended face value, in lieu of one-half of the pretended purchase price, in part payment for the so-called tritone painting to be made by respondent from one of the photographs so furnished, and said agents further offer to make one of said tritone paintings from the other photograph furnished as aforesaid without charge to the customer so that the whole cost to the customer of the reproductions from the two photographs would be, as represented by said agents, only one-half of the usual and customary price that respondent receives for one of said pictures, whereas the amount to be so paid by the customer is no less than the usual and customary amount respondent receives for two of such pictures, whereby customers are misled and deceived and thereby induced to give respondent an order for two of the so-called tritone paintings upon the mistaken belief that same are being offered at a greatly reduced price. .

PAR. 5. That respondent, further in the course of its said business, fraudulently induces persons to whom it furnishes reproductions of photographs, to sign a contract to purchase such reproductions upon the false representation that said contract is merely a receipt for the photographs obtained from the customer, with a memorandum of credits for trade checks or the drawing of a lucky envelope and a provision for a free picture or other like provision, which instrument is first signed by the agent for respondent, who is falsely described in such contract as an "advertising salesman," and which contract contains numerous provisions and recitals of a binding nature on the customer, which are not explained to or understood by said customer, among which are provisions to the effect that such contract can not be countermanded and that verbal agreements are not recognized.

PAR. 6. That the agents of respondent in soliciting orders in the course of its said business, exhibit to prospective customers a portrait in a frame with glass, in such manner as to create the false impression in the minds of such customers, that the prices at which respondent offers to make reproductions of photographs, cover the cost of the portraits, together with the frames and glass in which they are delivered, and though the contract which the customer is induced to sign, as set out in paragraph 5 hereof, contains a provision to the

effect that the price mentioned does not include frames or glass, this provision is not called to the attention of the customer, but the representation is made by such agents that the portrait ordered will be delivered in a suitable frame, without acquainting the customer with that portion of the contract, which provides that the customer must pay a "reasonable price" for the frame in addition to the cost of the portrait; that thereafter the portrait ordered is delivered to the customer in a frame, by an agent of the respondent other than the one which secured the order, the compensation of which delivery agent is dependent on commissions from the sale of frames; and such delivery agent sells the frame to the customer at a price greatly in excess of its true value or worth or refuses to leave the frame and delivers only the portrait. Other representations of a false or misleading nature similar to those described in the above paragraphs are made by agents of respondent in the course of its said business as a means of effecting sales of portraits and frames as aforesaid.

PAR. 7. That by reason of the facts recited, the respondent is using an unfair method of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon the respondent, Chicago Portrait Company, a corporation, charging it with unfair methods of competition in commerce in violation of the provisions of said Act.

The respondent having entered its appearance by its attorneys, and filed its answer herein, hearings were had before an Examiner of the Federal Trade Commission, theretofore duly appointed, and testimony and documentary evidence were thereupon offered and received in support of the allegations of said complaint and in support of the allegations of said answer of respondent, which evidence was duly recorded, duly certified and duly forwarded to the Commission.

And thereupon this proceeding came on for final hearing upon the testimony and documentary evidence so offered and received, and the Commission, having duly considered the record and the argument of opposing counsel herein, and being fully advised in the premises, makes its findings as to the facts and conclusion:

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FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent is a corporation organized under and existing by virtue of the laws of the State of Illinois, having its principal office and place of business in the city of Chicago in said State. It was incorporated in 1893 with a capital stock of \$2,500, which was increased in 1895 to \$50,000 and in 1897 to \$100,000; in 1902 to \$500,000, and decreased in 1915 to \$300,000, the present amount of respondent's capital stock.

PAR. 2. Respondent is engaged in the business of soliciting and taking orders for portraits to be made from photographs, and making such portraits from photographs, and in selling such portraits either with frames or without frames, and in causing such portraits and frames to be transported to the purchasers thereof, from the State of Illinois through and into other States of the United States, and also to foreign countries, namely, Mexico and Canada, and respondent carries on such business in direct, active competition with other persons, partnerships and corporations similarly engaged.

(a) In the course of such business respondent employs from 1,000 to 2,000 agents to solicit by house-to-house canvass, orders for, and to sell, from about 250,000 to 500,000 portraits annually, and an approximately equal number of frames for such portraits. Respondent had about 150,000 customers in 1921; about 300,000 in 1920, and more than 300,000 in 1919, the number of customers being about 60 per cent of the number of portraits sold. The respondent's total sales in 1921 amounted to \$2,493,813; in 1920, to \$3,870,057; in 1919, to \$4,166,897. The respondent's profits in 1919 were 6 $\frac{1}{8}$ per cent of its sales or about \$275,000; in 1920, 3 $\frac{1}{8}$ per cent of its sales, or about \$131,000; in 1921, 1 $\frac{1}{8}$ per cent of its sales or about \$29,925. Respondent paid dividends of 35 per cent upon its capital stock in 1919; of 25 per cent upon its capital stock in 1920; of 10 per cent upon its capital stock in 1921.

(b) Respondent is the largest concern in the United States in its field of activity, and it was estimated by one of its board of managers, under oath, that it transacts about one-third of the business done in this class of portraits in the United States. Among its competitors are the Syracuse Portrait Company, of Syracuse, New York, and the Roman Oil Portrait Company, the Commercial Portrait Company, the Aetna Copying Company, and the Pacific Portrait Company, all of Chicago, two or more of which do similar business along similar lines in the various States of the United States.

PAR. 3. Up to about 1895 or 1896 respondent made portraits of many sizes from 14 inches by 17 inches up. They were made in crayon or black and white and in pastel. A standard-size crayon portrait was sold by respondent at that time for \$1.98. Respondent found certain sizes most popular and developed an "Opal" portrait, 16 inches by 20 inches, and its salesmen carried no other portrait for some time. Later, portraits of this class were "convexed" or given a convex surface by means of a machine, and these portraits continued the standard portraits of the company for several years. After respondent had sold this "Opal" portrait for several years, its customers became pretty well supplied with this portrait, and the "Tritone," or three-tone, portrait was developed to take its place, its size being changed to 14 inches by 20 inches, instead of 16 inches by 20 inches, which had been the size of the "Opal" portrait. This was sold as a standard portrait by respondent for several years. Then the "Auratone" was developed, giving more color and mellowness and finally, the "C-P tone," which is now a standard portrait made by respondent, having as a trade-mark or label the initials of respondent company. These portraits are also 14 inches by 20 inches and are a standard line made and sold by respondent. Respondent, however, still sells the other standard styles of portrait mentioned in this paragraph. While respondent makes portraits of other sizes and styles, the great bulk of its business is and has been done in the styles and sizes set forth in this paragraph.

PAR. 4. In the years 1919, 1920, and 1921, respondent, in the course of its business, through its agents, being its salesmen, made representations to customers and prospective customers substantially as follows:

"I [the salesman or agent] am advertising some new art work. Mrs. Brown and Mrs. Sims say it is the finest they have ever seen.

* * * All concerns advertise in one way or another, but instead of our company paying the money for advertising in newspapers, magazines and farm journals, we decided to come right among the people and give them the benefit of the advertising money."

(a) In fact, at the time the representations set forth in this paragraph were being made by respondent's sales agents at the instance of respondent, respondent was actually advertising its portraits in farm journals. Such false representations as set forth in this paragraph made in sales talks by its sales agents at the instance of respondent, served to give plausibility to the other false representations of said agents made in the same sales talks to customers and

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prospective customers, that the usual price of the standard portraits of respondent were far in excess of the prices then being asked of the customer or prospective customer being solicited and such false representations were made for the purpose of aiding in making sales of respondent's portraits.

PAR. 5. Respondent, through its said agents, in the course of its business as described in paragraph 2 hereof, as an inducement to prospective customers to give orders for, and to purchase, its portraits, has, in the years 1919, 1920, and 1921, and for some time prior thereto, represented the actual value and usual selling prices of said portraits to be much greater than they actually were, and has offered prospective customers pretended special prices represented to be much less than the actual values or usual prices of said portraits, such special prices having been made on the announced consideration that the prospective customers would recommend the portraits and advertise the business of respondent.

(a) Respondent, through its said agents, in the course of its business, when soliciting orders for its "Tritone Portraits," made representations to prospective customers, including statements substantially as follows: .

"We make paintings like these for schools, colleges and other institutions, only instead of selling them for \$50 or \$100 we are selling them for \$20, but if you get a check it is worth \$10 to you."

After the prospective customer had been permitted to secure a trade check from the agent, through a so-called "drawing" of envelopes, and after the agent had secured photographs, this representation, in substance, was added:

"You get this one of your father in this \$20 work for \$10, and we are going to make you a \$20 painting of your mother absolutely free. \$40 worth of work for \$10. But we are going to ask one favor of you, that you will tell your neighbors and friends who made the work. You will certainly do that, won't you?"

(b) At the time that the above-quoted representations were being made by respondent's agents at the instance of respondent, to customers and prospective customers, \$10 was the ordinary and usual price secured for said "Tritone" portrait thus represented as selling for \$20, and with each such "Tritone" so sold at \$10, another similar "Tritone," often of a different subject or from a different photograph, was given free, so that both together were sold for \$10 or for \$5 each. Thousands of such portraits were sold at two for \$10, or one for \$10 with a like portrait free, and no such portrait was sold for \$20 by respondent.

(c) Respondent, in the course of its business, at times in 1920 and 1921, did sell such "Tritone" portraits and a like standard portrait known as the "Auratone," for from \$12.50 to \$15, giving in each instance a similar portrait, often of a different subject or from a different photograph, free with each portrait so sold, so that the actual price at which each such portrait was sold was at no time greater than \$6.25 to \$7.50. Such standard portraits made up 75 per cent of the entire sales of portraits by respondent.

(d) Such false representations as to price, as set forth in this paragraph, made by respondents's sales agents at the instance of respondent, in the course of sales talks to customers and prospective customers, served the purpose of aiding in selling the standard portraits made by respondent, and such representations were capable of deceiving customers and prospective customers into the belief that they would receive much greater value for the price asked than in fact they did receive, in case they purchased respondent's portraits. Not only were the prices at which respondent actually sold standard portraits to customers to which had been made the false representations set forth in this paragraph, the usual prices obtained by respondent for such portraits, but respondent's competitors ordinarily and usually sold similar portraits for similar prices.

PAR. 6. Subsequent to 1914 respondent, in the course of its business, through its said agents, made other representations to prospective customers substantially as follows:

(a)

"I am doing some demonstrating and have but a few minutes to spare in each home. I am advertising the Chicago Portrait Company's new 'Tritone' painting and want your opinion of it.

* * * * *

"I did not come here to sell you anything but here is what I am going to do. I am giving away 25 of these beautiful paintings in this district and I want you to show me right quick the two photographs you think the most of—the ones you are most interested in—and I will show you what I am going to make you a present of. Now get them right quick as I have only a few minutes to spare.

* * * * *

"Now here is what I am going to do for you. As I told you in the beginning, I did not come here to sell you anything, but I am sure you have decided this is an expensive painting. You are absolutely right and when we sell this work we get \$20 for each painting, but here is what I am going to do for you. I am going to make this one of your mother in our \$20 'Tritone' painting, and I am going to

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give you a \$10 trade check which pays \$10, or one-half, on Mother's painting, which is a wonderful present in itself, but here is the real big present. I am going to make this one of your father in our \$20 'Tritone' painting absolutely free, that is, on condition that you tell your friends and neighbors who made the work, and you will do that."

(b) At the time that the above representations were made, \$10 was the ordinary and usual price received for said "Tritone" thus represented as selling for \$20, and with each said "Tritone" so sold at \$10 a similar portrait, often of a different subject or from a different photograph, was given free, so that both together were sold for \$10 or for \$5 each. Thousands of such portraits were sold at the price of two for \$10 or \$10 for one with one free, and no such portrait was sold for \$20 by respondent in the ordinary course of its business. Respondent, in the course of its business, at times in 1920 and 1921, did sell such "Tritone" portraits and like standard portraits known as the "Auratone," for \$12.50 or for \$15, in each case giving with the portrait so sold another similar portrait free, so that the actual prices at which such portraits were sold were at no time greater than \$6.50 or \$7.50 each. Such standard portraits made up 75 per cent of the sales of respondent's portraits.

(c) Such false representations, as set forth in this paragraph, made by its sales agents at the instance of respondent, in the course of sales talks to customers and prospective customers, served the purpose of aiding in selling the portraits made by respondent.

(d) "Checks" or trade checks mentioned herein were printed slips issued by respondent and countersigned by its sales agents, purporting to represent \$10 or \$15, as shown by the face of the check, in payment for the standard portraits sold by respondent. Whether placed in the hands of prospective customers through the device of "drawing" from the salesman, as was sometimes done, or given directly to the prospective customer by the salesman, every prospective customer for standard portraits thought desirable to do business with was given such a check. This check was merely a device for getting the attention of the customer and thus aiding in making the sale. It was also, in effect, an additional means of giving plausibility to the statements made in the same sales talks that the usual prices of standard portraits sold by respondent were far in excess of the prices at which the sale was being made to the prospective customer. No money was paid by any customer for such trade check, whether secured by drawing or given directly by the salesman. In fact no money for its portraits was ever collected by respondent until such portraits were actually delivered to the customer.

PAR. 7. In the course of its business respondent, through its said sales agents, made additional representations, among others, in substance as follows:

(a)

"There are many things which make this painting beautiful. You will notice that it is oval with a raise in the center showing a natural rounded forehead and chest. Notice how the artist has brought out the features. Notice how the hair is painted. You can see every stroke of the artist's brush, with just enough color in the face to give it life and warmth. The background is taken from our famous sepia paintings. It seems to set the person right out into space. This wonderful painting is our special hand-made "Tritone."

(b) In fact, such portrait was not strictly hand-made, but was made in the following manner:

1. The photograph of the subject of the prospective portrait was secured and instructions as to whether the portrait was to be full-length or bust were written out.

2. The photograph was sent to the print plant of respondent, where was made from the photograph what was known as a print. This print was a photographic copy of the photograph, or an enlargement of the photograph by photographic process.

3. The print was mounted on a portrait mount or Bristol. It was "convexed" on a "convexing machine," when damp and under pressure, and was dried in the machine so as to give the print a permanent convex surface.

4. The print thus convexed was assigned by the head artist to one of his assistants, who proceeded to finish the portrait in the "medium" or style which had been ordered. The photographic enlargement served to cut down the cost of making the portrait.

5. The portrait was completed by hand, an important instrument in the completion being a mechanical device known as the "air brush." The above was and is and has been for several years the usual method used by respondent of making its standard portraits.

(c) The unqualified representation by respondent's sales agents, at the instance of respondent, that the portrait was hand-made served to give plausibility to other representations made in the same sales talks, namely, that the usual price of the standard portrait of respondent was far in excess of the price asked for such portrait of the prospective customer then being solicited, and thus said representations served to aid in the sale of said portrait.

PAR. 8. Respondent, in the course of its business, developed uniform methods of selling and required all its agents to adopt such methods. This has been the practice of respondent for many years,

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20 or more. Respondent at one time offered prizes for the best sales talks, indicating the best description of the portrait, the best method of approach to the home, the best method of securing the confidence of the prospective customer, the best method of arousing the prospective customer's interest, the best method of creating a desire for the painting, and the best method of closing. Respondent found that its best salesmen had similar methods, and took steps to make the sales method as uniform as it could so that respondent could pass it along to other salesmen. Out of that grew a uniform selling method.

(a) All details of method and conduct were worked out carefully, incorporated in printed "Sales Talks," sent its sales agents by respondent, drilled into its sales agents in room drills and conventions.

(b) While the "Sales Talks" were modified from time to time, they were generally in use by its salesmen at direction of respondent for many years prior to November, 1921, when the "Sales Talk" known in this record as Commission's Exhibit No. 1 was discontinued, and January, 1922, when the "Sales Talk" known in this record as Commission's Exhibit No. 2 was discontinued.

(c) Uniform sales methods were further promoted by minute organization of respondent's selling forces. Respondent has general road managers in charge of one or several States. Under the general road managers are road managers; under the road managers, district managers; and under the district managers, crew foremen, each of whom directs the work of a crew or group of respondent's salesmen. Respondent had, prior to the discontinuance of "Sales Talks" known in this record as Commission's Exhibits Nos. 1 and 2, instructed all agents to use one or the other in making sales.

(d) Respondent, in the course of its business, takes orders for portraits from its customers, in writing, by a contract stipulating that the order cannot be countermanded and that verbal agreements are not recognized.

(e) In the course of its business respondent delivers its portraits to its customers by delivery men other than persons who have taken the orders, and the delivery man makes collections for the portraits and sells and collects for frames for such portraits.

(f) Sales agents of respondent are given 25 per cent commission on their sales of portraits which have been delivered and collected for, and this commission is in full remuneration for their services. Other sales expenses swell the selling costs of respondent to 50 per cent of its sales receipts.

(g) Delivery men get as their remuneration for their services the difference between the invoice prices for frames and the prices at

which they sell the frames to customers who have purchased portraits. Such difference between invoice price and sales price varies between \$2.75 and \$3.25, as an average, for each frame. The frames ordinarily sell for \$7.50 or \$8.50 and the average price is about \$7.

(h) Both sales agents and delivery men are employed by respondents under written contracts giving respondent full control of the business activities of the sales agents and delivery men while in respondent's employ.

PAR. 9. The representations made by respondent's sales agents in sales talks to respondent's customers and prospective customers, at the instance of respondent, as hereinbefore set forth in paragraphs 4, 5, 6, and 7 of these findings, to the effect: (a) that respondent did not advertise in magazines or farm journals but gave the people the benefit of the advertising money, (b) that respondent ordinarily and usually sold its standard portraits for \$20 each, and (c) that its standard portraits were handmade were false representations deliberately made for the purpose of deceiving and misleading such customers and prospective customers, and had a capacity and tendency to mislead and deceive, and did mislead and deceive, such customers and prospective customers into the belief that the prices then being asked for such standard portraits were far less than the usual prices obtained by respondent for such portraits, and far less than the usual and actual selling or market values of such portraits; and such false representations were intended to serve, and did serve, to aid respondent in the sale of such standard portraits to such customers and prospective customers.

PAR. 10. Respondent has made it plain to customers or prospective customers that the prices paid for the portraits do not include payment for the frames, but that while the portrait will be delivered in a frame, an extra charge will be made for the frame, and it is within the right of the customer to refuse to accept the frame but rather to accept the portrait without frame and to pay for such portrait the price agreed upon for the portrait only.

CONCLUSION.

That the practices and activities of respondent, under the conditions and in the circumstances set forth in the foregoing findings as to the facts, are unfair methods of competition in commerce and constitute a violation of Section 5 of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

Dissent.

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ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon complaint of the Commission, the answer of the respondent, the testimony and documentary evidence offered and received, and the arguments of counsel for the respective parties hereto, and the Commission having made its Findings as to the Facts and its Conclusion that the respondent has violated the provisions of the Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," therefore,

It is now ordered, That the respondent, Chicago Portrait Company, a corporation organized under and existing by virtue of the laws of the State of Illinois, its officers and directors, agents, servants and employees, do cease and desist:

From representing to customers or prospective customers that the usual prices which it receives, or has received for its portraits, are greater than the prices at which similar portraits are offered, to such customers or prospective customers, when such is not the fact.

From using any trade check or other device, in such a way as to directly or indirectly represent to customers or prospective customers that portraits offered by respondent have greater selling prices than the prices at which same are offered, when such is not the fact.

It is further ordered, That respondent, within sixty (60) days after the date of the service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth, to which report shall be attached copies of all "Sales Talks" or like literature issued by respondent to its sales agents to be used in making sales to customers or prospective customers.

MEMORANDUM OF DISSENT.

Commissioner Van Fleet voted against the issuance of an order to cease and desist in this case and filed the following memorandum of dissent:

I cannot agree that an order should issue in this case. There is no proof that in a single instance any customer of respondent's was deceived or defrauded. The selling talk and trade certificate were perhaps calculated to make the customer believe he was getting a good bargain and to enhance the value in his eyes, but the fact remains that the portraits sold were well worth the money received. Great care was exercised in making the contract that the customer understood the same. There was nothing unfair in the contract

and there is not a single witness testifying to any dissatisfaction on the part of a customer. I call attention to the fact that if there had been such a customer among the thousands respondent has had, the attorneys for the Commission would no doubt have produced such testimony. The presumption is that there was none to be produced. Concerning the contention that a representation of value may be a representation of fact, I concede it may be in some cases as where the article has a market value. But the article in question had no market value. It was an article of respondent's sole manufacture and depended for its value on its artistic merit and worth nothing to anyone except the purchaser. It is the duty of the Commission to protect the public. In this case there is not a particle of evidence that anyone ever suffered from the acts of respondent, but rather the evidence shows that respondent's customers received full value for their money and that all the contracts of respondent were fulfilled though in many cases respondent's customers did not perform their part. To my mind there is no public interest to be protected by this order and its only effect will be to injure the respondent without any benefit to anyone.

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