

IN THE MATTER OF
EUGENE D. PETRY, DOING BUSINESS AS WARNER
STUDIOS

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 2749. Complaint, Mar. 21, 1936—Decision, June 20, 1936

Where an individual engaged in operation of a photograph and portrait studio in the city of Washington, D. C., and in many other cities in various States and in soliciting in said city sale of photographs and portraits of various types and kinds to persons sitting as subjects therefor, through house to house canvassers or salesmen—

- (a) Represented through coupons sold prospective purchasers at prices ranging from 50¢ to \$1.50, and through those presented without cost, in case of its so-called "Courtesy Offer," and variously entitling holders thereof to photographs of various types and kinds at said individual's studio upon payment there, in some cases, of an additional amount varying from 50¢ to \$1.00, but, in case of most, without further payment, that said coupons or "certificates" represented and entitled holder to a special favor or price, or "Special Advertising Offer" for the "latest in portraiture," and that regular value represented by such coupons or certificates, for which holder was thus charged amounts ranging from 50¢ to \$2.50, was from \$3.50 to \$7.50, as case might be, and represented in soliciting sale of said photographs or portraits as aforesaid through said salesmen that regular value thereof was far in excess of the usual prevailing prices for similar products in said city and offered same to such purchasers at pretended special prices which were considerably less than their represented regular value, upon the supposed consideration that the prospective purchaser would "advertise" his business to friends and neighbors in the purchaser's particular community;

Facts being such regular values or usual prices were fictitious and misleading, many purchasers of such special offer coupons found upon presentation thereof at his studio that he was reluctant and unwilling to honor same according to terms printed thereon, such supposed special offers were only a part of a continuous scheme of solicitation in the regular, usual course and conduct of his said business, and said photographs or portraits of the supposed regular value of from \$3.50 to \$7.50 each were exactly the same kind, type and quality as regularly and ordinarily sold by popular priced studios operated and conducted by competitors in such District at prices ranging from \$1.00 to \$2.00;

With effect of misleading and deceiving purchasers into the belief that they were obtaining such photographs at prices far below their usual selling prices and below their true or regular value or worth; and

- (b) Set forth upon said certificates or coupons the trade name "Warner Studios" employed by him and such statements and representations as "Operating Exclusively with Movie Lighting Equipment" and "New Motion Picture Film Used," notwithstanding fact he did not use such film nor operate exclusively with such equipment in making his said photographs or

650

Complaint

portraits; with effect of misleading many purchasers into the belief that he was in some manner connected with the Warner Brothers Motion Picture Studios of Hollywood; and

- (c) Designated and described photographs sold by it as "Goldtone Colored in Oil," notwithstanding fact it was not a Goldtone but a less costly sepia print which he did not actually color in oil but bathed by rubbing with oil-soaked cotton;

With capacity and tendency to mislead and deceive purchasing public and induce purchasers to buy its said photographic products in and on account of the belief that said representations and statements were true and thus unfairly divert trade from his competitors located in said District of Columbia who in nowise make the same or similar false and misleading representations and statements, and employ such methods and practices, but truthfully represent to the public the true or real values and prices for their said products, and in connection therewith accurately and truthfully represent the kind or quality thereof offered for such prices, and do not through use of simulation of corporate or trade name in connection with other statements used, create the inference in the minds of the members of such public that they are dealing with some outstanding and well known Hollywood motion picture studio:

Held, That such acts and practices, under the conditions and circumstances set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. DeWitt T. Puckett for the Commission.

Mr. Daniel C. Eberly and *Mr. Chester A. Bennett*, of Washington, D. C., for respondent.

COMPLAINT

Pursuant to the provisions 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," the Federal Trade Commission, having reason to believe that Eugene D. Petry, an individual, doing business under the trade name of Warner Studios, hereinafter referred to as respondent, has been, and now is, using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Eugene D. Petry, is an individual trading under the firm name and style of Warner Studios, with his principal office and place of business, located at 1317 F St., in the city of Washington, in the District of Columbia; and also maintains offices, and does business, as an individual, under said trade name of Warner Studios in many other cities located in various States of the United States.

Complaint

22 F. T. C.

PAR. 2. Respondent is now, and has been, for more than 1 year last past, engaged in the business of conducting and operating a photograph and portrait studio in the city of Washington, in the District of Columbia, at and from which he solicits the sale of, and sells, photographs and portraits of various types and kinds to members of the purchasing public located and residing in said District, and who sit as subjects for such photographs or portraits in respondent's said studio. In the course and conduct of his said business, as aforesaid, respondent is in competition with other individuals, firms, partnerships, and corporations likewise engaged in conducting and operating photograph and portrait studios in said District of Columbia, and who likewise are engaged in the sale of photographs and portraits of those persons who reside in said District, and who sit as subjects in their studios.

PAR. 3. In the course and conduct of his said business, the respondent, in offering for sale, in soliciting the sale of, and in selling said photographs or portraits, employs salesmen or canvassers to canvass from house to house in the said District of Columbia for the purpose of contacting prospective purchasers of such photographs or portraits, and inducing them to have such photographs or portraits taken of themselves, and having them take the necessary sittings therefor at respondent's studio in said District; and, as an inducement to such prospective purchasers to purchase such photographs or portraits, and to take such necessary sittings therefor, the respondent has caused, authorized, instructed, suffered, and permitted his said salesmen or canvassers in soliciting the sale of such photographs or portraits to make false and misleading statements and representations in the distribution and sale by them, for varying amounts ranging from 50 cents to \$1.50, of purported coupons or "certificates," which, according to the terms thereof, entitle the holders and purchasers of same to certain alleged favored or special prices for photographs or portraits of various types and kinds to be taken of them at respondent's said studio. Almost all of these coupons or "certificates" deal with, and have stated therein in bold type, an alleged "Special Advertising Offer," or other special offer, for what is claimed by respondent, in much smaller type contained therein, to be the "latest in portraiture"; and each of which has, when used by the purchaser thereof, according to the terms of the particular offer contained in each of said various coupons or "certificates," a "regular value" varying from \$3.50 to \$7.50, as will hereinafter appear and be more particularly and fully set forth. Some of these purported coupons

or "certificates" contain the respondent's direction and authorization to the prospective purchaser to pay his "representative 50¢ for this certificate"; and, some, the respondent's direction and authorization to the prospective purchaser to "pay representative \$1.00 for this certificate"; while, in other instances, no sum is required, and in these latter instances the coupon or "certificate" is represented as a "courtesy offer" featured in bold, large type.

In the case of one particular type of coupon or "certificate," so sold and distributed by respondent's salesmen or canvassers, having an alleged and purported "regular value" of \$7.50, there are contained therein the statements "for \$2.50 only," and respondent's direction and authorization to "pay representative \$1.50," calling for the "balance at studio \$1.00," which balance, presumably, is required to be paid at the time of the sitting, or when otherwise used by the purchaser thereof. In the case of most of these coupons or "certificates," according to the terms printed thereon, "no balance at studio" is required from the purchaser; while, in others there is contained the statement that the purchaser is required to pay in addition "50¢ balance at the studio," which balance, presumably, is required to be paid at the time of the sitting, or when otherwise used by the purchaser thereof. Except for some of these said instances, where additional payment of a "balance" is required, as hereinabove enumerated and described, the particular amount paid to respondent's canvasser or "representative" for each said particular type or kind of coupon or "certificate" by the purchaser thereof, constitutes, or is supposed to constitute, the total cost for the particular type of photograph or portrait offered thereby by the respondent in accordance with the terms printed in each of said coupons or "certificates."

PAR. 4. Some of these coupons, so sold, contain other statements and representations, such as, "Operating Exclusively With Movie Lighting Equipment" and "New Motion Picture Film Used"; and, displayed in prominent bold type on each of these coupons or "certificates," there appears respondent's trade name "WARNER STUDIOS"; and, each of these coupons contains substantially, and with very little difference, the same language in connection with featuring the various offers and inducements of special prices made therein to prospective purchasers of respondent's photographs and portraits, which, exclusive of such language are, in each instance substantially as follows:

Complaint

22 F. T. C.

(a)

This Offer Can Not Be Purchased at Studio

WARNER STUDIOS

* * *

* * *

Regular
VALUE \$3.50Selection of Proofs
UnmountedLatest in
PortraitureNew Motion Pic-
ture Film Used

SPECIAL ADVERTISING OFFER

ONE 8 x 10 PORTRAIT COLORED IN OIL

Pay Representative 50¢
for this Certificate

FOR 50¢ ONLY

No balance
at Studio

* * *

Good until ----- Representative-----

* * *

* * *

* * *

(b)

This Offer Can Not Be Purchased at Studio

WARNER STUDIOS

* * *

* * *

Regular
VALUE \$5.00

Selection of Proofs

Latest in
PortraitureNew Motion Picture
Film Used

SPECIAL ADVERTISING OFFER

ONE 8 x 10 GOLDTONE COLORED IN OIL

Pay Representative \$1.00
for this Certificate

FOR \$1.00 ONLY

No Balance
at Studio

* * *

Good until ----- Representative-----

* * *

* * *

* * *

650

Complaint

(c)

SPECIAL PORTRAIT OFFER

* * *

* * *

WARNER STUDIOS

* * *

* * *

Introducing to Washington Photography's Latest Creation

ONE 11 x 14 TAPESTRY OIL PAINTING

Pay Representative 50¢
for this Certificate

FOR \$1.00 ONLY

Pay 50¢
Balance at
Time of Sitting

* * *

Operating Exclusively with Movie Lighting Equipment

* * *

* * *

----- Salesman
Good Until-----

(d)

This Offer Can Not Be Purchased At Studio

WARNER STUDIOS

* * *

* * *

Regular
VALUE \$5.00

Selection of 4 to 6 proofs

Latest in
Portraiture

New Motion Pic-
ture Film Used

SPECIAL CHRISTMAS OFFER

ONE 8 x 10 GOLDTONE COLORED IN OIL

Pay Representative \$1.00
for this Certificate

FOR \$1.00 ONLY

No Balance at
Studio

* * *

Good Until----- Representative-----

* * *

* * *

* * *

Complaint

22 F. T. C.

(e)

This Offer Can Not Be Purchased At Studio

WARNER STUDIOS

* * *

* * *

Regular
VALUE \$5.00

Selection of 4 Proofs

Latest in Portraiture

New Motion Picture
Film Used

SPECIAL CHRISTMAS OFFER

ONE 8 x 10 GOLDTONE COLORED IN OIL

Pay Representative 50¢
for this Certificate

FOR \$1.00 ONLY

50¢ Balance at
Studio

* * *

Good until ----- Representative -----

* * *

* * *

* * *

(f)

This Offer Can Not Be Purchased At Studio

WARNER STUDIOS

* * *

* * *

Regular
VALUE \$5.00

Selection of Proofs

Latest in Portraiture

New Motion Picture
Film Used

SPECIAL ADVERTISING OFFER

ONE 8 x 10 FRENCH VIGNETTE

Pay Representative 50¢
for this Certificate

FOR 50¢ ONLY

No Balance at
Studio

* * *

Good Until ----- Representative -----

* * *

* * *

* * *

650

Complaint

(g)

COURTESY OFFER

* * *

Selection of
Proofs

ONE 8 x 10 PORTRAIT
of Yourself or any Member of your Family
FREE

This offer cannot be purchased at Studio

* * *

WARNER STUDIOS

* * *

* * *

* * *

This Portrait has been Paid for by -----

(h)

This Offer Can Not Be Purchased At Studio

WARNER STUDIOS

* * *

* * *

Regular
VALUE \$5.00

Selection of Proofs

Latest in Portraiture

New Motion Picture
Film Used

SPECIAL ADVERTISING OFFER

ONE 8 x 10 GOLDTONE COLORED IN OIL

Pay Representative 50¢
for this Certificate

FOR \$1.00 ONLY

50¢ Balance at
Studio

* * *

Good Until ----- Representative-----

* * *

* * *

* * *

Complaint

22 F. T. C.

(1)

This Offer obtained through Representative only. Regular Price without this certificate \$7.50.

WARNER STUDIOS

* * *

* * *

VALUE \$7.50

Operating Exclusively with Movie Lighting Equipment

SPECIAL ADVERTISING OFFER

One Ivora Miniature in Oil, Complete with Frame
(SELECTION OF PROOFS)

Pay Representative \$1.50

For \$2.50 ONLY

Balance at
Studio \$1.00

Additional Portraits at Special prices to Holders of Certificates Only.

(Special representative)

Good Until-----

* * *

* * *

* * *

(J)

This Offer Can Not Be Purchased At Studio

WARNER STUDIOS

* * *

* * *

Regular
VALUE \$5.00

Selection of Proofs
Unmounted

Latest in
Portraiture

New Motion
Picture
Film Used

SPECIAL PORTRAIT OFFER

ONE 8 x 10 VELOUR OIL PAINTING

Pay Representative 50¢
for this Certificate

FOR 50¢ ONLY

No Balance at Studio

* * *

Good Until----- Representative-----

* * *

* * *

* * *

PAR. 5. In the course and conduct of his business, as aforesaid, and in soliciting the sale of and selling of said photographs or portraits, as heretofore described and set forth, respondent, through his salesmen or canvassers, appointed by him as agents in his behalf, in order to induce prospective customers to purchase said various types of photographs or portraits, and to take the necessary sittings therefor represents, the "regular value" thereof to be far in excess of the prices at which such photographs or portraits actually, ordinarily and usually sell in the city of Washington, District of Columbia; and, the respondent, together with, and, in connection with such representations of "regular value," then offers the said prospective purchasers, in each of the instances above enumerated and set forth, pretended special prices which are considerably much less than the represented "regular value" for such photographs or portraits; and, which pretended "Special Advertising Offers" or, other special offers, are made upon the claimed consideration that such prospective purchasers will "advertise" the business of the respondent to their friends and neighbors residing in their respective communities; when, in truth and in fact, such special prices represented by respondent to be the usual prices or "regular value" of his photographs or portraits are fictitious and misleading, and are calculated to, and actually do mislead and deceive purchasers and prospective purchasers as to the real value of said photographs or portraits and their usual selling prices, and do mislead and deceive them into the belief that they are obtaining said photographs or portraits at prices far below their usual selling prices and below their true and "regular value" or worth, when they buy at the pretended special prices offered by respondent, as hereinabove set forth; and, further, when respondent's said special prices made and offered by him to purchasers and prospective purchasers in his said coupons or "certificates" in the manner and method heretofore described and set forth, are in fact misleading and a misrepresentation in that:

(a) Many of said purchasers who purchased, from respondent's "representatives" or canvassers, the so-called "Special Advertising Offer" and other special offer coupons or "certificates," as hereinabove enumerated and set forth, have, upon presentation of same, at the respondent's studio, either found the respondent reluctant and unwilling to honor same according to the terms printed thereon; or were either high-pressured or unfairly coerced by a most intensive sales effort into purchasing additional photographs or portraits at higher prices; or were informed and told that the photographs or portraits called for on the face of the "certificate" could not be furnished by respondent except upon the payment of additional

money; or were in other instances flatly refused the particular photograph or portrait provided and called for by the terms of said coupon or "certificate."

(b) Many such purchasers have inferred from the use of respondent's trade name, "WARNER STUDIOS" printed on some of said coupons or "certificates," when taken together with other statements printed thereon, such as, "Operating Exclusively With Movie Lighting Equipment," and "New Motion Picture Film Used," that the respondent is in some manner connected with Warner Brothers Motion Picture Studios of Hollywood, Calif., when such is actually not the fact.

(c) Prospective purchasers and purchasers were misled and deceived by respondent's claim that he was making "Special Advertising Offers" and other special offers, when actually such offers were only a part of a continuous scheme of solicitation in the regular, usual course and conduct of his said business.

(d) Prospective purchasers and purchasers were misled and deceived by respondent's claim of offering for sale and selling photographs or portraits, represented by him to be of from \$3.50 to \$7.50 "regular value," when in fact, exactly the same kind, type, and quality of photographs or portraits are regularly, usually and ordinarily sold by popular price studios operated and conducted by respondent's competitors in said District, at prices ranging from \$1.00 to \$2.00.

(e) The photograph which the respondent advertises and represents to be a "Goldtone Colored in Oil," is not in fact a Goldtone, but a sepia print which costs less to produce than the Goldtone, and which respondent does not actually color in oil but bathes by rubbing with oil-soaked cotton.

PAR. 6. In the course and conduct of his business, as aforesaid, respondent is in competition with corporations, partnerships, firms, and individuals likewise engaged in conducting and operating photograph and portrait studios located in the said District of Columbia, who in nowise make the same or similar false and misleading representations and statements as are made by the respondent, and who do not employ, use, or indulge in the methods and practices, hereinabove alleged and set forth in this complaint, but who truthfully represent to the purchasing public the true, honest, and real values or prices for their photographs or portraits, and who accurately and truthfully, in connection with such prices, do not misrepresent the type, kind, or quality of the photographs or portraits offered for sale by them for such prices; and, who do not, by the use of a false and misleading corporate or trade name, or other statements used

or employed in connection therewith, create the inference in the minds of members of the purchasing public that they are dealing with some outstanding and well known motion picture studio located in Hollywood, Calif.

PAR. 7. The aforesaid representations made by the respondent about and concerning his photographs or portraits, and the employment and use by him of the name "WARNER STUDIOS" as hereinabove stated, have the capacity and tendency to deceive and mislead the purchasing public, and to induce purchasers to buy the said photographic products of the respondent in and on account of the belief that said representations and statements are true, and thus unfairly divert trade to respondent from his said competitors located in the said District of Columbia.

PAR. 8. The acts and things done by respondent, and the methods and practices employed, used, and indulged in by him, as hereinabove alleged, described and set forth are all to the injury and prejudice of the public and to respondent's competitors, and constitute unfair methods of competition in interstate 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 the provisions 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," the Federal Trade Commission, on the 21st day of March 1936, issued and served its complaint in this proceeding upon the respondent, Eugene D. Petry, doing business under the trade name of Warner Studios, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of said respondent's answer thereto, a stipulation as to the facts was entered into between the respondent through his attorneys, Daniel C. Eberly, Esq., and Chester A. Bennett, Esq., and this Commission, subject to its approval, through its chief counsel, W. T. Kelley, Esq., in and by which stipulation it was agreed that the statement of facts contained therein might be taken as the facts in this proceedings and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto; and in which stipulation it was provided that the Commission might proceed upon said statement of facts to make its report; its findings as to the facts (including inferences which it

Findings

22 F. T. C.

might draw from the said stipulated facts) and its conclusion based thereon and under its order disposing of the proceeding without the presentation of arguments or the filing of briefs; and the Commission having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Eugene D. Petry, is an individual trading under the firm name and style of Warner Studios, and is engaged in the operation of a photograph and portrait studio, with his principal office and place of business located at 1317 F St., in the city of Washington, in the District of Columbia. He also does business under said trade name in many other cities located in various States of the United States.

PAR. 2. In the course and conduct of his business, respondent operates a photograph and portrait studio in the city of Washington, in the District of Columbia, at and from which he solicits the sale of, and sells, photographs and portraits of various types and kinds to persons who sit as subjects for such photographs or portraits. In said business, respondent is in competition with other individuals, firms, partnerships, and corporations likewise engaged in operating photograph and portrait studios in said District of Columbia, and in selling photographs and portraits to those persons who sit as subjects therefor.

PAR. 3. In the course and conduct of his said business, the respondent, in soliciting the sale of and in selling said photographs or portraits, employs salesmen to canvass from house to house in the said District of Columbia for the purpose of contacting prospective purchasers of such photographs or portraits, and inducing them to have such photographs or portraits taken of themselves, and having them take the necessary sittings therefor at respondent's studio in said District. As an inducement to such prospective purchasers to purchase such photographs or portraits, the respondent has caused, instructed, suffered, and permitted his said salesmen to make false and misleading statements and representations in the distribution and sale by them, for varying amounts ranging from 50 cents to \$1.50 of purported coupons or "certificates," which, according to the terms thereof, entitle the holders and purchasers of same to certain alleged favored or special prices for photographs or portraits of various types and kinds to be taken of them at respondent's said studio. Almost all of these coupons or "certificates" deal with, and

have stated therein in bold type, an alleged "Special Advertising Offer," or other special offer, for what is claimed by respondent, in much smaller type contained therein, to be the "latest in portraiture"; and each of which has, when used by the purchaser thereof, according to the terms of the particular offer contained in each of said various coupons or "certificates," a "regular value" varying from \$3.50 to \$7.50. Some of these purported coupons or "certificates" contain the respondent's direction and authorization to the prospective purchaser to pay his "representative 50¢ for this certificate"; and, some, the direction to "pay representative \$1.00 for this certificate." In other instances no sum is required; and, in these latter instances the coupon or "certificate" is represented as a "Courtesy Offer" featured in bold large type.

In the case of one particular type of coupon or "certificate," so sold and distributed by respondent's salesmen, having an alleged and purported "regular value" of \$7.50, there are contained therein the statements "for \$2.50 only," and respondent's direction and authorization to "pay representative \$1.50," calling for the "balance at studio \$1.00," which balance is required to be paid at the time of the sitting, or when otherwise used by the purchaser thereof. In the case of most of these coupons or "certificates," according to the terms printed thereon, "no balance at studio" is required from the purchaser; while, in others there is contained the statement that the purchaser is required to pay in addition "50¢ balance at the studio," which balance is required to be paid at the time of the sitting, or when otherwise used by the purchaser thereof. Except for some of these said instances, where additional payment of a "balance" is required, as hereinabove described, the particular amount paid to respondent's canvasser or "representative" for each said particular type or kind of coupon or "certificate" by the purchaser thereof, constitutes, or is supposed to constitute, the total cost for the particular type of photograph or portrait offered thereby by the respondent in accordance with the terms printed in each of said coupons or "certificates."

PAR. 4. Some of these coupons, so sold, contain other statements and representations such as "Operating Exclusively with Movie Lighting Equipment" and "New Motion Picture Film Used"; and, displayed in prominent bold type on each of these coupons or "certificates," there appears respondent's trade name "WARNER STUDIOS." In fact respondent does not use new motion picture film and does not operate exclusively with Movie Lighting Equipment in making his photographs and portraits. Each of these coupons contains substantially, and with very little difference, the same language

Findings

22 F. T. C.

in connection with featuring the various offers and inducements of special prices made therein to prospective purchasers of respondent's photographs and portraits.

PAR. 5. In the course and conduct of his business, as aforesaid, and in soliciting the sale of and selling of said photographs or portraits, as heretofore described and set forth, respondent, through his salesmen, in order to induce prospective customers to purchase said various types of photographs or portraits, and to take the necessary sittings therefor, represents the "regular value" thereof to be far in excess of the prices at which such photographs or portraits actually, ordinarily and usually sell in the city of Washington, District of Columbia. The respondent, in connection with such representations of "regular value," then offers the said prospective purchasers, in each of the instances above set forth, pretended special prices which are considerably less than the represented "regular value" for such photographs or portraits; and, which pretended "Special Advertising Offers" or other special offers, are made upon the claimed consideration that such prospective purchasers will "advertise" the business of the respondent to their friends and neighbors residing in their respective communities. In truth and in fact, such prices represented by respondent to be the usual prices or "regular value" of his photographs or portraits are fictitious and misleading, and are calculated to and actually do mislead and deceive purchasers and prospective purchasers as to the real value of said photographs or portraits and their usual selling prices, and do mislead and deceive them into the belief that they are obtaining said photographs or portraits at prices far below their usual selling prices and below their true and "regular value" or worth, when they buy at the pretended special prices offered by respondent, as hereinabove set forth. Further, respondent's said special prices made and offered by him to purchasers and prospective purchasers in his said coupons or "certificates" in the manner and method heretofore described and set forth are in fact misleading and a misrepresentation in that:

(a) Many of said purchasers who purchased from respondent's salesmen the so-called "Special Advertising Offer" and other special offer coupons or "certificates," as hereinabove set forth, have, upon presentation of same at the respondent's studio, found the respondent reluctant and unwilling to honor same according to the terms printed thereon.

(b) Many such purchasers have inferred from the use of respondent's trade name, "WARNER STUDIOS," printed on some of said coupons or "certificates," when taken together with other statements printed

650

Findings

thereon, such as "Operating Exclusively With Movie Lighting Equipment" and "New Motion Picture Film Used," that the respondent is in some manner connected with Warner Brothers Motion Picture Studios of Hollywood, Calif.

(c) Prospective purchasers and purchasers were misled and deceived by respondent's claim that he was making "Special Advertising Offers" and other special offers, when actually such offers were only a part of a continuous scheme of solicitation in the regular, usual course and conduct of his said business.

(d) Prospective purchasers and purchasers were misled and deceived by respondent's claim of offering for sale and selling photographs or portraits represented by him to be of regular value of from \$3.50 to \$7.50 each, when in fact exactly the same kind, type, and quality of photographs or portraits are regularly, usually, and ordinarily sold by popular price studios operated and conducted by respondent's competitors in said District at prices ranging from \$1.00 to \$2.00.

(e) The photograph which the respondent advertises and represents to be a "Goldtone Colored in Oil" is not in fact a Goldtone, but a sepia print which costs less to produce than the Goldtone, and which respondent does not actually color in oil but bathes by rubbing with oil-soaked cotton.

PAR. 6. In the course and conduct of his business, as aforesaid, respondent is in competition with corporations, partnerships, firms, and individuals likewise engaged in conducting and operating photograph and portrait studios located in the said District of Columbia, who in no wise make the same or similar false and misleading representations and statements as are made by the respondent. Said competitors do not employ, use, or indulge in the methods and practices hereinabove set forth, but truthfully represent to the purchasing public the true, honest, and real values or prices for their photographs or portraits, and accurately and truthfully in connection with such prices represent the type, kind, or quality of the photographs or portraits offered for sale by them for such prices. Said competitors do not by the use of simulating a corporate or trade name, when taken together with other statements used or employed in connection therewith, create the inference in the minds of members of the purchasing public that they are dealing with some outstanding and well-known motion picture studio located in Hollywood, Calif.

PAR. 7. The aforesaid representations made by the respondent about and concerning his photographs or portraits, and the employment and use by him of the name "WARNER STUDIOS" as hereinabove stated, have the capacity and tendency to deceive and mislead the purchasing public, and to induce purchasers to buy the said photo-

Order

22 F. T. C.

graphic products of the respondent in and on account of the belief that said representations and statements are true, and thus unfairly divert trade to respondent from his said competitors located in the said District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondent under the conditions and circumstances set forth in the foregoing findings are to the prejudice of the public and of respondent's competitors, and 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."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and a stipulation entered into between the respondent herein, Eugene D. Petry, an individual doing business under the trade name of Warner Studios, by his counsel, Daniel C. Eberly and Chester A. Bennett, and counsel for this Commission, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions 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."

Now, therefore, it is hereby ordered, That said respondent, Eugene D. Petry, an individual, doing business under the trade name of Warner Studios, his agents, representatives and employees, in the sale and offering for sale in interstate commerce, and in the District of Columbia, of photographs and portraits of various types and kinds to persons who sit as subjects therefor, forthwith cease and desist from:

(1) Representing, directly or by implication, that the various types of photographs and portraits made in his studio have actual and regular values, and customarily sell for sums, in excess of the prices actually charged for said photographs and portraits.

(2) Representing, through advertising literature containing the descriptive language "Goldtone Colored in Oil" or language of similar import, or in any manner whatever, that sepia print photographs are Goldtones or are Goldtones Colored in Oil.

(3) Representing in connection with his trade name, Warner Studios, through advertising literature containing the descriptive language "Operating Exclusively With Movie Lighting Equipment"

650

Order

or "New Motion Picture Film Used" or language of similar import or in any manner whatever, directly or by implication, that his photographic and portrait studio is in any way connected with Warner Brothers Motion Picture Studios of Hollywood, Calif.

It is further ordered, That said respondent shall within 60 days from the date of service upon him of this order file with the Commission a report in writing setting forth in detail the manner and form in which this order had been complied with.

IN THE MATTER OF
VAUGHN C. SALTER AND PAUL TESSON, TRADING AS
FALCON CAMERA CO.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 2778. Complaint, Apr. 23, 1936—Decision, June 20, 1936

Where two individuals, engaged in business of distributing and selling cameras to retail merchants in connection with a sales promotion plan sold by them, and under which they solicited and sold to retailers, through their traveling representatives, trade coupons at \$4.50 a thousand in minimum 5,000 lots, as a rule, at a cost to the retail dealer of \$22.50, paid by deposit when contract was signed, and by C. O. D. balance payment upon receipt of shipment, and under which plan such coupons were to be distributed to dealers' customers and customers were entitled to receipt of a camera upon remitting 30 coupons to said individuals, together with a small sum to cover, ostensibly, cost of packing and shipping and safe delivery, and with undertaking on part of said individuals to reimburse said \$4.50 a thousand to dealer when 25 percent of the trade coupons or tickets has been sent in for redemption—

- (a) Represented directly and through sales talk of their said representatives acting under their instructions and through their advertising literature, trade tickets, and contracts, in soliciting sale of said tickets, that they were the manufacturers of the Falcon camera, name of which they included in their trade name, and of the film used in connection therewith, facts being they were not the manufacturers of such cameras or films, but purchased cameras sold by them in wholesale lots from the manufacturer thereof;
- (b) Represented that they had devised and put into operation their said sales promotion plan under which Falcon cameras were allegedly given free or for approximately the expense of packing and shipping only, for the purpose of increasing the number of such cameras in use by the public and with result, incident thereto, of materially increasing the sale of such film as only film that can be used in said cameras, facts being that such statement was false and they had no interest in the sale of films for use in such cameras;
- (c) Represented that sum of 30 cents, to be remitted by each person sending in trade tickets for redemption, was not intended to apply in any way to purchase of cameras but merely to cover cost of packing and shipping same, together with cost of one trial roll of film, and stated upon said trade tickets that cost of packing and shipping, including purported safe delivery, was 40 cents, facts being that the smaller sum covered not only cost of packing and shipping camera actually sent, but entire costs to said individuals of said camera and roll of film included, and cost of packing and shipping was covered by the additional 10 cents requested, as aforesaid, on such tickets, purportedly to cover insured safe delivery;
- (d) Represented that a five-camera display, to be furnished to retailer upon execution of contract and to become his property, would consist of one Falcon Model No. 2 and four Falcon Model No. 1 cameras, and represented retail value of the No. 1 model as \$4 or more, and depicted such various