

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

models in advertising literature supplied in its salesmen's kits for use in soliciting prospective purchasers of such plan, facts being that the five-camera display actually supplied consisted of one Falcon Model No. 2 and one Falcon Model No. 1, and three Univex Model A cameras, retail prices of which latter generally range from 40 cents to 50 cents apiece, and value of which is substantially less than either of aforesaid Falcon models;

- (e) Represented in soliciting as aforesaid, that the cameras furnished to persons sending in such trade tickets for redemption would be the Falcon Model No. 1 and be identical with that exhibited to the retailer, and in their said sales talk and in all of their display posters and advertising literature made reference only to Falcon Models No. 1 and 2, and actually exhibited to prospective purchaser only such cameras, neither of which show any distinguishing marks, or lettering identifying them, respectively, as such models or as Model A cameras, and through all the negotiations leading to the signing of the contract represented that the Falcon Model No. 1, depicted thereon, was the Model A camera referred to therein, and in the trade tickets, and made no reference to the Model A Univex camera actually supplied and which was manufactured by a different concern and in no way comparable with Falcon in price or value, and which was not contained in salesmen's kits nor exhibited to prospective purchasers of such sales plan nor referred to in such negotiations;
- (f) Falsely represented that retailer entering into such promotional sales plan would be furnished a supply of hand bills for circularization among customers; and
- (g) Falsely represented that use of such sales promotional plan and distribution of cameras in connection therewith would promote the retailer's business, secure the good will of his customers, and result in a substantial increase of his sales;

With result that such false and misleading representations on the part of said individuals and their traveling representatives mislead a substantial portion of the consuming public by inducing them to believe that such representations were true and that, upon purchase of such sales plan, such retail dealers would receive the benefits represented to accrue therefrom, and that, upon sending in such tickets for redemption, their respective customers would receive the merchandise represented, and such plan and merchandise were sold in substantial quantities to such dealers and to the consuming public on account of the erroneous beliefs induced as aforesaid, and said individuals, in accordance with their plan and expectation, and in view of their failure to supply camera represented, and resulting complaints to retailer and subsequent discontinuance of further distribution of such tickets by him and sending thereof in for redemption by his customers, could not be called upon to refund, as promised, such \$4.50 a thousand upon return of 25 percent of the tickets, and trade was diverted from competitors, among whom there are those who truthfully represent the purpose and nature of their plans and the quality of the merchandise used in conjunction therewith, and who do not in any wise misrepresent the benefits that may be expected to be obtained therefrom; to the substantial injury of competition in commerce:

Held, That such practices were each and all to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. J. T. Welch, for the Commission.

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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 Vaughn C. Salter and Paul Tesson, trading and doing business under the trade name, Falcon Camera Co., hereinafter referred to as respondents, have been and now are using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the 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. Respondents, Vaughn C. Salter and Paul Tesson, trading and doing business as Falcon Camera Co., have their principal office and place of business located at 8277 De Soto Ave., in the city of Detroit, State of Michigan. Respondents are now, and have been for approximately 1 year last past, engaged in the business of distributing and selling, in commerce as herein set out, a sales promotional plan together with certain items of merchandise, such as cameras, used in furthering said plan, to retailers.

PAR. 2. Said respondents, being engaged in business as aforesaid, cause said merchandising plan, together with the advertising literature used in connection therewith and the various items of merchandise also used in connection therewith, when sold, to be transported from their office and principal place of business in the State of Michigan to the purchasers thereof located at various points in States of the United States other than the State of Michigan and in the District of Columbia. The respondents have at all times mentioned herein, maintained a constant current of trade and commerce in said sales promotional plan and the merchandise sold in connection therewith, between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and operation of their said business, respondents have been, and are now, engaged in substantial competition with other firms and with corporations and individuals likewise engaged in the business of distributing and selling sales promotional plans of various types, and various items of merchandise sold in connection with said plans, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course of the operation of their business, the respondents, either acting by themselves or in conjunction and in cooperation with their various traveling representatives, have engaged

in a scheme to defraud, and have defrauded, the retail dealers purchasing their said sales promotional plan in the following manner:

Respondents' sales promotional plan consists in the retailer purchasing trade tickets printed by the respondents at a high and exorbitant price of approximately \$4.50 per thousand. These tickets are distributed by the retailer to his customers, one ticket being distributed with each purchase of a stipulated amount. When the purchaser has accumulated 25 trade tickets, the said tickets, together with the sum of 30 cents, purported to cover only the cost of packing and shipping and one trial roll of film, are forwarded by said customer to the respondents, and the respondents in turn ship a camera to said customer.

Respondents employ a number of traveling representatives for the purpose of securing from retailers the purchase of said sales promotional plan and the execution of certain contracts in connection therewith.

Respondents provide each of said traveling salesmen with a salesman's kit in which are included certain posters and circulars hereinafter more particularly described, one Falcon Automatic Camera, Model No. 2, and one Vestpocket Falcon Camera, Model No. 1, together with samples of trade tickets used in connection with said sales promotional plan, and a number of blank contracts. The traveling representatives, being supplied by the respondents with the said salesman's kit and its contents, call on and visit dealers located in various States of the United States and solicit said retail dealers to become purchasers of the respondents' promotional plan, including the items of merchandise sold in connection therewith. In making said solicitations, the respondents or said traveling representatives, acting under instructions from the respondents, use a sales talk for the purpose of inducing prospective purchasers to purchase the said sales promotional plan.

In this sales talk and in the advertising literature, trade tickets and contracts, the respondents themselves, or their representatives, represent: (1) that the said respondents trading under the name, Falcon Camera Co., are the manufacturers of the Falcon cameras and the film used in connection therewith; (2) that said respondents devised and put into operation said sales promotional plan by which Falcon cameras are claimed to be given free or for approximately the expense of packing and shipping only, for the purpose of increasing the number of said cameras in use by the public with the result of materially increasing the sale of films to be used in connection therewith; which films are the only ones that can be used in said cameras; (3) that the sum of 30 cents, which is to be remitted by each person sending in trade tickets for redemption, is intended not to apply

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in any way to the purchase of the camera, but merely to cover the cost of packing and shipping said camera together with the cost of one trial roll of film; (4) that the 5-camera display agreed to be furnished to the retailer upon execution of the contract, said display becoming the property of the retailer, will consist of one Falcon Model No. 2 and four Falcon Model No. 1 cameras; (5) that the cameras furnished those persons sending in trade tickets for redemption will be Model 1 Falcon cameras; (6) that the retailer will be supplied with a supply of hand bills for circularization among his customers; and (7) that the use of said sales promotional plan and the distribution of the cameras in connection therewith will promote his business, secure the good-will of his customers, and result in a substantial increase of sales by said retailer.

The respondents or their representatives, in connection with the presentation of said sales talk, exhibit to the prospective purchaser of said sales plan, the various items included in the salesman's kit, including the Falcon cameras, Models 1 and 2, and said prospective purchasers are advised that the cameras furnished to persons sending in trade tickets for redemption will be the Falcon camera Model No. 1, and will be identical to the Falcon camera exhibited to said retailer.

Certain advertising literature contained in said salesman's kit is also exhibited to the prospective purchaser of the sales promotional plan. In one poster designed for display by the retail dealer to his customers, one Falcon Model No. 2, together with four Falcon Models No. 1 are depicted, and the object of the campaign is represented to be for the purpose of starting the consumers and customers into using a certain type of roll film for said cameras. In another of the posters designed for display by the retailer to his customers, a Falcon Model No. 1 camera is depicted, and said camera therein depicted is represented to have a retail value of \$4 or more. In still another of the posters designed for display by the retailer to his customers and for circularization among said customers, the Falcon camera Model No. 2 is depicted.

On said trade tickets printed and furnished by the respondents, it is also represented that said camera to be obtained by customers of the retail dealer upon redemption of said trade tickets, is to be obtained free and without cost, except the cost of packing and shipping which, including purported insured safe delivery is represented to be 40 cents.

In said sales talk and in all of said display posters and advertising literature exhibited to the prospective purchaser of the respondents' sales promotional plan, reference is made only to Falcon cameras, Models Nos. 1 and 2, and the respondents, or their salesmen, actu-

ally exhibit to said prospective purchaser of said plan, only Falcon cameras. The Falcon cameras of both models do not show any distinguishing marks or lettering to indicate that they are respectively Models No. 1 or 2, or to show whether or not said models are Model A cameras. In the contracts and on the trade tickets Model A cameras are the ones promised by the respondents and their representatives to be furnished to those persons sending in trade tickets for redemption. On the contracts the Falcon camera, without any lettering to indicate what model it is, is depicted. Throughout all the negotiations leading up to the execution of the contracts in connection with said plan, respondents and their representatives represent that the Falcon camera Model No. 1 is the Model A camera referred to in said contracts and in said trade tickets and no reference whatever is made to the Model A Univex camera, and this model camera is not contained in salesmen's kits and is not exhibited to the prospective purchaser of said sales plan.

The minimum order generally accepted by the respondents in connection with their said sales promotional plan is 5,000 cards, which cost the retail dealer \$22.50. A deposit is paid at the time the contract is signed, and the remainder of the purchase price is paid when the shipment is received C. O. D., without the purchaser having an opportunity to examine the contents of said shipment.

PAR. 5. In truth and in fact the respondents are not the manufacturers of the Falcon cameras or of the films used in connection with said cameras, but purchase said cameras in wholesale lots from the manufacturer. In truth and in fact the respondents' sales promotional plan is not one by which Falcon cameras are given free, or for approximately the expense of packing and shipping only, for the purpose of increasing the number of said cameras in use by the public with the result of materially increasing the sale of films to be used in connection therewith. The respondents actually ship to the retail dealers' customers who send in tickets for redemption, cameras that are not Falcon cameras and that do not in any wise approximate the Falcon Model No. 1 camera in appearance, size, or value. The respondents are not in fact interested in the sale of films to be used in Falcon cameras, but are interested principally and primarily in the sale of said promotional plan for the purpose of obtaining the profits resulting therefrom. The sum of 30 cents which is remitted by each person sending in trade tickets for redemption does not cover solely the cost of packing and shipping the camera actually shipped to said person, but actually covers the entire cost to the respondents of said camera, together with the cost of one roll of film sent therewith. The cost of packing and shipping the camera that is actually shipped to such person is included in the 10 cents

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requested by the respondents on said trade tickets, purportedly to cover insured safe delivery. In truth and in fact the 5-camera display furnished to the retailer upon execution of the contract consists of one Falcon Model No. 2, and one Falcon Model No. 1 camera, together with three Univex Model A cameras. Said Univex Model A cameras generally retail for prices ranging from 40 cents to 50 cents each, and are substantially less valuable than either of said Falcon cameras. The cameras actually shipped to those persons sending in trade tickets for redemption are Model A Univex cameras and are not manufactured by the same concern manufacturing the Falcon cameras, and are in no way comparable to said Falcon cameras in price or value. In truth and in fact respondents do not furnish said retailers with any supply of handbills for circularization among said retailers' customers. The execution of said contracts does not increase said retailers' sales or secure for said retailers the good will of their customers.

PAR. 6. In connection with the execution of the contracts ordering trade tickets on the high and exorbitant basis of \$4.50 per thousand, the respondents guarantee to make a cash refund to said retailers so executing said contracts, of \$4.50 per thousand upon redemption of 25 percent of said trade tickets. Said guarantee of cash refund is designed and intended to and does influence retail dealers into purchasing said trade tickets at the high and exorbitant prices charged therefor and into executing said contracts in the belief that they can and will readily secure redemption of at least 25 percent of said trade tickets and, as a consequence thereof, secure from respondents cash refunds sufficient to minimize or entirely cover the cost of said promotional plan. At the time said guarantee is made the respondents know, or have reason to believe, that when the first customers of the retail dealers executing said contracts send in trade tickets for redemption, and receive in exchange therefor the Model A Univex camera, said customers will take such action as to cause said retail dealers to withdraw said trade tickets from further circulation and distribution, and that said dealers will be forced, on account of the nature of the respondents' acts and practices as hereinabove set forth, so to refrain from further circulating said trade tickets as to make possible a redemption of 25 percent thereof. The respondents well know, or have reason to believe, that said purported guaranteed cash refund is a lure and a snare, devised and intended for the sole purpose of securing the execution of said contracts by said retail dealers in the expectation of being able, through the cooperation of the respondents, to comply with the terms of the guaranty and secure said cash refunds and that said dealers will be unable, on account of respondents' acts and practices as hereinabove detailed,

to comply with the terms of the contracts to such an extent as to qualify for said refunds.

PAR. 7. As a result of said sales talk and the other acts and practices of the respondents as herein set forth, and as a result of the confidence and reliance placed in the statements and representations made by the respondents and their representatives, a number of retail dealers have purchased, and they continue to purchase, said sales plan, and execute the contracts in connection therewith.

Many of respondents' competitors engaged in the business of distributing and selling sales promotional plans of various types and various items of merchandise in connection with said plans, truthfully represent the purpose and nature of said plans and truthfully represent the character and quality of the merchandise used in conjunction with said plans, and do not in any wise misrepresent the benefits that may be expected to be obtained from a use of said sales plans.

PAR. 8. The effect of the foregoing false and misleading representations on the part of the respondents and their traveling representatives is to mislead a substantial number of retail dealers, as well as a substantial portion of the consuming public by inducing them to believe that the representations made by the respondents and their representatives, as set out hereinabove in detail, are true and that, upon purchase of respondents' sales promotional plan, said retail dealers will receive the benefits represented to accrue therefrom and that, upon sending in trade tickets for redemption, their respective customers will receive the merchandise represented.

The foregoing false and misleading statements and representations on the part of respondents serve as inducements for substantial numbers of retail dealers to purchase the sales promotional plan of the respondents and execute the contracts in connection therewith, and said false and misleading statements and representations have a tendency to, and do, divert trade from respondents' competitors engaged in similar businesses with the result that substantial quantities of respondents' sales promotional plan and the merchandise used in conjunction therewith are sold to said dealers and to the consuming public on account of said beliefs induced as aforesaid. As a consequence thereof, a substantial injury has been done by respondents to substantial competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 9. The above and foregoing acts, practices and representations of the respondents have been, and are, all to the prejudice of the public and respondents' competitors as aforesaid, and have been, and are, unfair methods of competition within the meaning and intent of Section 5 of an Act of Congress approved September 26, 1914,

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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 April 23, 1936, issued and served its complaint in this proceeding upon the respondents, Vaughn C. Salter and Paul Tesson, trading as Falcon Camera Co., charging said respondents with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, the respondents filed an answer in which they stated that they waived hearing on the charges set forth in the complaint, that they did not wish to contest the proceeding, that they admitted all the material allegations of the complaint to be true, and that they consented that the Commission may, without trial, without further evidence, and without any intervening procedure, make, enter, issue, and serve upon them, the said respondents, its findings as to the facts and conclusions based thereon and an order to cease and desist from the methods of competition alleged in the complaint. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint and the answer of the respondents, 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. Respondents, Vaughn C. Salter and Paul Tesson, trading and doing business as Falcon Camera Co., have had their principal place of business located at 8277 De Soto Ave., in the city of Detroit, State of Michigan. They have been engaged in the business of distributing and selling cameras to retail merchants in connection with a certain sales promotional plan which they also sold. Said respondents ship said cameras and advertising literature used in connection with the distribution thereof and their sales promotional plan from their place of business in Detroit, Mich., to retail merchants located at points in various States of the United States other than the State of Michigan who purchase said sales promotional plan and the cameras sold in connection therewith. Respondents have, since their entry into business, maintained a constant current

of trade in said sales promotional plan and said cameras in commerce among and between the various States of the United States.

PAR. 2. Other partnerships, corporations, and individuals also sell and distribute sales promotional plans of various types and various items of merchandise used in connection with said plans, in commerce among and between the various States of the United States, and respondents, in the operation of their business, are engaged in substantial competition with said corporations, partnerships, and individuals.

PAR. 3. The respondents, either acting by themselves or in conjunction and in cooperation with their various traveling representatives, in the course of the operation of their business, have engaged in a scheme to induce the purchase of their said cameras and sales promotional plan in the following manner:

The retailer purchases trade tickets printed by the respondents at a price of approximately \$4.50 per thousand. These tickets are then distributed by the retailer to his customers, one ticket being distributed with each purchase of a stipulated amount. When the purchaser has accumulated 25 trade tickets, the said tickets, together with the sum of 30 cents, purported and represented to cover only the cost of packing and shipping of one camera and one trial roll of film, are forwarded by said customer direct to the respondents. The respondents in turn ship a camera and one roll of film to said customer.

For the purpose of securing a large number of retailers to purchase said sales promotional plan and execute certain contracts in connection therewith respondents employ a number of traveling representatives and provide each of said representatives with a salesman's kit in which are included certain posters and circulars, hereinafter more particularly described; one Falcon Automatic Camera, Model No. 2, and one Vest Pocket Falcon Camera, Model No. 1, together with samples of trade tickets used in connection with said sales promotional plan, and a number of blank contracts. The representatives, being supplied by the respondents with said salesman's kit and its contents, call on and solicit retail dealers located at points in various States of the United States for the purpose of inducing said dealers to become purchasers of said sales promotional plan and the items of merchandise sold in connection therewith. In making said solicitations the respondents themselves, or their traveling representatives, acting under instructions from the respondents, use a sales talk. In this sales talk and in the advertising literature, trade tickets, and contracts, the respondents themselves represent:

(1) that the said respondents, trading under the name Falcon Camera Co., are the manufacturers of the Falcon cameras and the film used in connection therewith;

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(2) that said respondents devised and put into operation said sales promotional plan by which Falcon cameras are claimed to be given free or for approximately the expense of packing and shipping only, for the purpose of increasing the number of said cameras in use by the public with the result of materially increasing the sale of films to be used in connection therewith; which films are the only ones that can be used in said cameras;

(3) that the sum of 30 cents, which is to be remitted by each person sending in trade tickets for redemption, is intended not to apply in any way to the purchase of the camera, but merely to cover the cost of packing and shipping said camera together with the cost of one trial roll of film;

(4) that the five-camera display agreed to be furnished to the retailer upon execution of the contract, said display becoming the property of the retailer, will consist of one Falcon Model No. 2 and 4 Falcon Model No. 1 cameras;

(5) that the cameras furnished those persons sending in trade tickets for redemption will be Model 1 Falcon cameras;

(6) that the retailer will be supplied with a supply of handbills for circularization among his customers;

(7) that the use of said sales promotional plan and the distribution of the cameras in connection therewith will promote his business, secure the good-will of his customers, and result in a substantial increase of sales by said retailer.

In the course of said sales talk and in the solicitation of retail dealers to execute contracts in connection with said sales promotional plan, the respondents and their various representatives exhibit to said retail dealers the various items included in the salesman's kit, including the Falcon cameras, Models 1 and 2, and said retail dealers are advised that the cameras furnished to persons sending in trade tickets for redemption will be the Falcon camera Model No. 1, and will be identical to the Falcon camera exhibited to said retailer.

Certain advertising literature contained in said salesman's kit is also exhibited to the prospective purchaser of the sales promotional plan. In one poster designed for display by the retail dealer to his customers, one Falcon Model No. 2, together with 4 Falcon Models No. 1 are depicted, and the object of the campaign is represented to be for the purpose of starting the consumers and customers into using a certain type of roll film for said cameras. In another of the posters designed for display by the retailer to his customers, a Falcon Model No. 1 camera is depicted, and said camera therein depicted is represented to have a retail value of \$4 or more. In still another of the posters designed for display by the retailer to his

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customers and for circularization among said customers, the Falcon camera Model No. 2 is depicted.

On said trade tickets printed and furnished by the respondents, it is also represented that said camera to be obtained by customers of the retail dealer upon redemption of said trade tickets, is to be obtained free and without cost, except the cost of packing and shipping which, including purported insured safe delivery is represented to be 40 cents.

In said sales talk and in all of said display posters and advertising literature exhibited to the prospective purchaser of the respondents' sales promotional plan, reference is made only to Falcon cameras, Models Nos. 1 and 2, and the respondents, or their salesmen, actually exhibit to said prospective purchaser of said plan, only Falcon cameras. The Falcon cameras of both models do not show any distinguishing marks or lettering to indicate that they are respectively Models No. 1 or 2, or to show whether or not said models are Model A cameras. In the contracts and on the trade tickets Model A cameras are the ones promised by the respondents and their representatives to be furnished to those persons sending in trade tickets for redemption. On the contracts the Falcon camera, without any lettering to indicate what model it is, is depicted. Throughout all the negotiations leading up to the execution of the contracts in connection with said plan, respondents and their representatives represent that the Falcon camera Model No. 1 is the Model A camera referred to in said contracts and in said trade tickets and no reference whatever is made to the Model A Univex camera, and this model camera is not contained in salesmen's kits and is not exhibited to the prospective purchaser of said sales plan.

The minimum order generally accepted by the respondents in connection with their said sales promotional plan is 5,000 cards, which cost the retail dealer \$22.50. A deposit is paid at the time the contract is signed, and the remainder of the purchase price is paid when the shipment is received C. O. D., without the purchaser having an opportunity to examine the contents of said shipment.

PAR. 4. The respondents are not the manufacturers of the Falcon cameras or of the film used in connection with said cameras. They purchase said cameras in wholesale lots from the manufacturer thereof. The respondents' sales promotional plan is not one by which Falcon cameras are given free, or for approximately the expense of packing and shipping only, for the purpose of increasing the number of said cameras in use by the public with the result of materially increasing the sale of films to be used in connection therewith, or for any other purpose. They are not interested in the sale of films to be used in Falcon cameras. The respondents actually ship

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to the customers who send in tickets for redemption, cameras that are not Falcon cameras and that do not in any wise approximate the Falcon Model No. 1 camera in appearance, size, or value. The sum of 30 cents which is remitted by each person sending in trade tickets for redemption does not cover solely the cost of packing and shipping the camera actually shipped to said customer, but actually covers the entire cost to the respondents of said camera, together with the cost of one roll of film sent therewith. The cost of packing and shipping the camera that is actually shipped to such customer is included in the 10 cents requested by the respondents on said trade tickets, purportedly to cover insured safe delivery. The five-camera display furnished to the retailer upon execution of the contract consists of one Falcon Model No. 2, and one Falcon Model No. 1 camera, together with three Univex Model A cameras. The Univex Model A cameras generally retail at prices ranging from 40 cents to 50 cents each, and are substantially less valuable than either of said Falcon cameras. The cameras actually shipped to those persons sending in trade tickets for redemption are Model A Univex cameras and are not manufactured by the same concern manufacturing the Falcon cameras, and are in no way comparable to said Falcon cameras in price or value. Respondents do not furnish said retailers with any supply of hand bills for circularization, and the execution of contracts for said sales promotional plan does not increase said retailers' sales or secure for said retailers the good-will of their customers.

PAR. 5. The respondents guarantee to make a cash refund, to the retail dealers purchasing their sales promotional plan, of \$4.50 per thousand upon redemption of 25 percent of said trade tickets. This guarantee of a cash refund is designed and intended to and does influence retail dealers into purchasing said trade tickets at the high and exorbitant prices charged and into executing said contracts in the erroneous belief that they can and will readily secure redemption of at least 25 percent of said trade tickets and thus secure cash refunds from the respondents sufficient to minimize or entirely cover the cost of said promotional plan. The respondents know, or have reason to believe, at the time the guarantee is made to the retail dealer, that when the first customers send in their trade tickets for redemption and receive in exchange therefor the Univex Model A camera, said customers will complain to the retail dealers from whom they obtained the trade tickets and that said dealers will thereby be forced to refrain from further circulating said trade tickets. Upon failing to circulate said trade tickets, a redemption of 25 percent thereof is thus made impossible. Said purported guarantee cash refund is devised and intended solely for the purpose of securing the execution of said contracts by the retail dealers and the payment of

the sum of \$4.50 per thousand for trade tickets and certain hereinabove described merchandise which does not have a value in any way approximating the cost thereof to said retail dealers. Respondents know, or have reason to believe, that the retail dealers executing contracts and purchasing said sales promotional plan will be unable to qualify for the refunds claimed.

PAR. 6. As a result of said sales talk and the other acts and practices of the respondents, as herein set out, and as a result of the confidence and reliance placed in the statements and representations made by the respondents and their representatives, a number of retail dealers have purchased said sales promotional plan, including the merchandise in connection therewith, and have executed the contracts herein referred to.

Many of respondents' competitors engaged in the business of distributing and selling sales promotional plans of various types and various items of merchandise in connection with said plans, truthfully represent the purpose and nature of said plans and truthfully represent the character and quality of the merchandise used in conjunction with said plans, and do not in any wise misrepresent the benefits that may be expected to be obtained from a use of said sales plans.

PAR. 7. The effect of the foregoing false and misleading representations on the part of the respondents and their traveling representatives is to mislead a substantial portion of the consuming public by inducing them to believe that the representations made by the respondents and their representatives, as set out hereinabove in detail, are true, and that, upon purchase of respondents' sales promotional plan, said retail dealers will receive the benefits represented to accrue therefrom and that, upon sending in trade tickets for redemption, their respective customers will receive the merchandise represented.

The foregoing false and misleading statements and representations on the part of respondents serve as inducements for substantial numbers of retail dealers to purchase the sales promotional plan of the respondents and execute the contracts in connection therewith, and said false and misleading statements and representations have a tendency to, and do, divert trade from respondents' competitors engaged in similar businesses with the result that substantial quantities of respondents' sales promotional plan, and the merchandise used in conjunction therewith are sold to said dealers and to the consuming public on account of said beliefs induced as aforesaid. As a consequence thereof, a substantial injury has been done by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

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CONCLUSION

The aforesaid acts and practices of the respondents are each and all to the prejudice of the public, and to the competitors of the respondents, and constitute unfair methods 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."

ORDER TO CEASE AND DESIST

This matter coming on to be heard by the Commission upon a complaint filed herein on the 23rd day of April 1936 and answer to said complaint dated May 25, 1936, and filed on this date by Vaughn C. Salter and Paul Tesson, trading as Falcon Camera Co., respondents herein, in which answer said respondents state that they desire to waive hearing and not to contest the proceeding and that they admit all of the material allegations of the complaint to be true and consent that the Commission may, without trial, without further evidence, and without intervening procedure, make, enter, issue, and serve upon said respondents, its findings as to the facts and its conclusion based thereon and an order to cease and desist from the methods of competition alleged in the complaint; and the Commission having duly considered the complaint and said answer, and being fully advised in the premises;

It is now ordered, That the time within which answer may be filed by said respondents be extended to this date and the answer of the respondents, Vaughn C. Salter and Paul Tesson, trading as Falcon Camera Co., be received and filed.

It is further ordered, That the respondents, Vaughn C. Salter and Paul Tesson, trading as Falcon Camera Co., their agents, representatives, servants, and employees, in connection with the distribution and sale of promotional sales plans and items of merchandise, such as cameras, used in connection with said plans, in interstate commerce, cease and desist from:

Representing or advertising, directly or by implication, through their trade name Falcon Camera Co. or through circulars, display cards, sales talks, or any other form of advertising, or in any other way,

(a) that they are the manufacturers of Falcon cameras and the film used in connection with Falcon cameras;

(b) that their sales promotional plan was devised and put into operation principally for the purpose of increasing the sale of films to be used in said Falcon cameras;

Order

(c) that the sum directed to be remitted by each person sending in trade tickets for redemption covers only the cost of packing and shipping said cameras, together with the cost of one trial roll of film;

(d) that the five-camera display furnished the retailer in connection with the sales promotional plan will consist of one Falcon Model No. 2 and four Falcon Model No. 1 cameras;

(e) that the cameras shipped to those persons sending in trade tickets for redemption will be Model No. 1 Falcon cameras;

(f) that the retailers entering into said sales promotional plan will be furnished a supply of handbills for circularization among customers; and

(g) that the use of said sales promotional plan and the distribution of cameras in connection therewith will promote the retailer's business, secure an increase in sales, and secure the good-will of his customers.

It is further ordered, That the respondents shall, within 60 days from the date of service upon them of a copy of this order, file with the Commission a report in writing, setting forth the manner and form in which they have complied with the order herein set forth.

IN THE MATTER OF
GLENN LEACH, TRADING AS G. LEACH & COMPANY

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

Docket 2480. Complaint, June 29, 1935—Decision, June 23, 1936.

Where an individual engaged in the offer, sale, and distribution of earthenware kitchen utensils to members of the public in the various States through salesmen, representatives, and agents employed to sell his said product, and authorized and directed by him to canvass from house to house in various cities and towns and solicit prospective purchasers of such products, and exhibit samples thereof and distribute leaflets, pamphlets, etc., concerning the same and the various materials out of which made, and relative value of each to the user and, in connection with exhibition of such samples, and distribution and reading of such printed matter to make statements to such prospective purchasers concerning his products and the product of competitors to induce purchase of the former—

- (a) Defamed and disparaged through aforesaid means competitors' aluminum kitchen utensils by falsely representing that consumption of food prepared or kept therein would cause ulcers, cancers, cancerous growths, and other ailments and diseases, and that food so prepared, or kept therein was deleterious to user and that consumption of food prepared in his own utensils would not lead to dire conditions falsely attributed to consumption of food prepared in the other;

Facts being aluminum in contact with food causes no deleterious contamination, nor is there any scientific evidence that it causes or contributes to cancer, and said various statements were false;

With intent of inducing purchasing public to buy such earthenware, and refrain from purchasing such aluminum products, in belief that use of former would safeguard, and use of latter would injure, health of user and cause disease, and with effect of misleading and deceiving a substantial number thereof into the false belief that such various statements and representations were true and of inducing them to refrain from buying such aluminum ware and to purchase his said products and of substantially diverting trade to him from competitors who do not make such false representations;

- (b) Represented as aforesaid to customers or potential customers that the price at which his said products were offered was much lower than the retail price charged therefor and that they were being offered and sold at factory cost and only a few sales were to be made at such low price to introduce product in particular locality in which it was being offered;

Facts being price at which offered was its regular retail price at which sales were invariably made and so-called higher retail price was wholly fictitious and greatly in excess of that at which it had been or was intended to be sold in usual course of trade, and he never offered same at factory cost;

With intent of inducing purchasing public to buy such articles in the belief they were obtaining same at a financial saving and that, if they were not then purchased, regular price would later be asked, and with effect of misleading and deceiving a substantial number thereof into false belief that by buying at offered price they were securing greater value than they