

Syllabus

IN THE MATTER OF

INTERNATIONAL ART COMPANY, AMERICAN DISCOUNT
COMPANY AND JOHN C. KUCKCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2767. Complaint, Apr. 15, 1936—Decision, Dec. 16, 1938*

Where (1) corporation engaged in producing, offering and selling tinted or colored enlargements of photographs and frames therefor, (2) corporation subsequently organized and used to collect any unpaid indebtedness due on pictures sold by former to its customers, and (3) individual who owned almost entire outstanding stock of each of aforesaid two corporations and directed and controlled the sales policy and general business methods pursued thereby, and had full control and management over district managers, salesmen and other representatives of corporation first referred to;

In selling, through said first corporation, by means of numerous crews of solicitors and salesmen who (1) traveled throughout the various States and worked under supervision of crew or district manager, and whom (2) it supplied with cards certifying the bearer to be its duly accredited representative, and with contracts and order blanks, and who customarily represented to customers solicited that customer was dealing directly with aforesaid corporation in purchasing pictures and frames therefrom, and were generally recognized by public as its agents, and whom it aided and abetted in their representations below set forth through supplying same with standardized sales talks containing such false and misleading statements; and, as aforesaid engaged in sale of such colored enlargements and frames to purchasers in other States, in substantial competition with others engaged in offer and sale among the various States and in the District of Columbia of photographs, pictures, and frames and other similar products, and including among such competitors those who do not employ and maintain practices below set out, but truthfully represent and honestly vend their products, and those who truthfully represent same as paintings—

(a) Represented to prospects solicited in towns, villages, and rural communities that sample or supposed sample displayed of finished work had won first prize, and that corporation in question had arranged for its artist to paint the particular family size, to be limited to a few people in each locality, for exhibition purposes, and that, by reason of the advertising feature, the prospect would be given the picture for the actual cost of materials or materials and delivery, and referred to the pictures as "oil paintings," "paintings," "hand-painted," or "finely finished paintings," and advised prospect that such work usually sold for \$30 a picture, unframed, and, at times, for various higher named prices up to \$100, and that the picture would be like the attractively colored sample, enclosed in glass in hexagon frame, which prospect need not take, and, in some cases involving child or infant, that Chicago-Tribune was preparing to hold baby contest and arrangements had been made by said corporation to enter its pictures therein;

Facts being so-called pictures which it solicited were not paintings but merely colored enlargements of photographs secured from prospect and cost of

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similar work ranged from 75¢ to \$1.50, and it did not use oil paint in its said work, but crayon, pastel, and water color, finished picture was not in any sense a "painting" or "hand-painted," etc., nor like the sample, and aforesaid representations with respect to the winning of any prizes or the conduct of any advertising or advertising features or baby contests or limitation to few people, etc., were false and misleading, as were supposed selling prices or values assigned to work in question, which it sold for its long-time regular price of \$7.50 and not at mere cost of materials, etc.;

- (b) Made use of "contest" or "draw" in furtherance of fraudulent sales plan aforesaid, and to convince purchaser that such colored enlargement was being sold only to selected few at greatly reduced price and less than that being paid by other purchasers, under which invariably lucky winner of a "red seal certificate" or "blue seal certificate", as the case might be, thereby became entitled to one picture for \$15 and a second one free, or two pictures for the supposed special price of one, or, in some cases, to one picture for one-half of such special so-called introductory offer of \$15 or for \$7.50, and thereby beguiled prospects into believing they were the exceptional few whom fortune had favored, and into entering into contract for purchase of one of its pictures in said belief and as having won distinct advantage over other customers in same locality;

Facts being all were approached in same way and paid same price, and no picture was given free or without additional charge, but it secured for each sold its regular price aforesaid;

- (c) Made use of plan under which it delivered the finished enlargement or picture, enclosed in hexagon design and frame, through so-called "delivery-man" not theretofore in contact with customer, and who presented finished picture, framed as aforesaid, to purchaser and informed purchaser objecting to quality, design, or price thereof (and theretofore advised, as aforesaid, that frame need not be taken), that due to odd design no store carried such frames in stock and corporation in question was only one that furnished such products in said particular design, and that, in view of shape of picture, it could not be fitted satisfactorily into any other shape and would quickly deteriorate, retained unframed, and presented for signature to purchaser lacking cash to pay both balance on picture and cost of frame, judgment note for balance and carrying charge;

With result that it thereby succeeded, ordinarily, in selling for exorbitant price, and often for as much as \$22.50 to \$25 apiece, frames, prices of which to it ranged from 45¢ to \$1.75 and \$2 apiece, and forced buyer to purchase something which he did not originally intend to, and to deal with it in purchase of such frames, and placed in hands of said representatives or "delivery-men" means whereby they could and did sell for exorbitant amounts its said products; and

- (d) Informed such purchasers as had only partially paid for picture and signed judgment note in favor of second corporation as above stated, and had written to first-named and seller company making complaint and demanding adjustment of account, that matter was out of the hands of corporation thus addressed and had been turned over to said second corporation, or supposed discount company, by whom complaining customer was thereafter advised, upon communicating therewith, that it was a finance house and had discounted customer's note and paid its money therefor and must be reimbursed, and, failing to be reimbursed, would be forced to take legal action at additional cost to customer whose signature

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appeared on note in its possession, and that under no circumstances would it accept return of merchandise for credit;

With result that it thereby misled and deceived purchasers of their aforesaid products into belief that supposed discount company was innocent holder for value of contracts entered into between purchasers and first and seller corporation, and that purchasers were thereby cut off from making complaint to said first corporation, with which their contracts had been made, with respect to the character, quality, price, or other material aspects of the work covered and comprehended thereby;

Facts being supposed discount company paid no consideration to the other, or any other one, for purchasers' notes, transacted business solely with said other corporation, and was not in position aforesaid of innocent holder for value, but constituted merely vehicle set up by individual owner of both companies to force payments of notes executed by purchasers under such alleged fiction:

With effect of deceiving purchasers into buying products of said first and seller corporation as and for those possessing characteristics and qualities claimed therefor, and of placing in the hands of their managers, sales agents, and "delivery-men" means of deceiving customers thereof and of diverting unfairly to themselves trade of competitors engaged in sale, in commerce among the various States and in District of Columbia, of products of same kind and nature and truthfully advertised and represented:

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

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. Marshall Morgan for the Commission.

Fry & Fry, of Chicago, Ill., for respondents.

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 International Art Co., a corporation, American Discount Co., a corporation, and John C. Kuck, an individual, each hereinafter referred to as respondent, have been and are using unfair methods of competition in commerce as 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. Both respondents, International Art Co. and American Discount Co., are corporations organized, existing, and doing business under and by virtue of the laws of the State of Illinois, each with its principal office and place of business located at 325 West Huron Street, Chicago, Ill. While each of the respondents is a separate corporate entity, each has the same president.

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Respondent John C. Kuck is president and general manager of respondent International Art Co. and of respondent American Discount Co. Respondent Kuck owns a controlling interest in each of said companies and directs the activities and controls the affairs and policies of each including the conduct of sales campaigns, the character of sales representations made and all business interviews and correspondence incident thereto.

Respondent International Art Co. is now, and has been for more than 2 years last past, engaged in the business of offering for sale and the selling of tinted or colored enlargements of family and other photographs, and of frames therefor. Respondent International Art Co. sells its products through the medium of salesmen or representatives appointed by it as agents in its behalf, to customers located in States other than the State of Illinois. In consummating such sales and in distributing such products, respondent International Art Co. causes the pictures and frames so sold by it to be transported and delivered from its place of business in Chicago in the State of Illinois through and into various other States of the United States to the respective purchasers thereof at their respective points of location. In the course and conduct of its said business, respondent International Art Co., has been, and is now, engaged in direct and substantial competition with various corporations, partnerships, and individuals likewise engaged in the sale, between and among the various States of the United States, of tinted or colored photographic enlargements, and, likewise, with corporations, partnerships, and individuals engaged in the sale among the various States of the United States of genuine original paintings, including oil paintings and water color paintings, as will be more fully hereinafter shown.

Respondent American Discount Co. is a corporation organized, controlled, and operated by respondent International Art Co. to serve as an agency and medium for the latter in collecting balances due from purchasers of pictures and frames therefor sold by respondent International Art Co. through its agents and representatives, to customers throughout the various States of the United States other than the State of Illinois, as also will be more fully hereinafter shown.

PAR. 2. In the course and conduct of its said business, respondent International Art Co. causes agents and representatives employed by it to visit the homes of prospective customers in the cities, towns, and rural communities of the various States of the United States. Under said respondent's selling plan, it organizes its said agents and representatives into squads or teams, each designated by a certain name and taking charge of and working a particular territory. Among such squads or teams so organized by and under the super-

vision and authority of respondent International Art Co. for the purpose of selling tinted photographic enlargements made by it, are, and were, squads or teams designated by such titles as Saturday Workers' Club, Match 4 Club, Big Match Club, Monday Workers' Club, Twenty-five a Week Club, the Ramblers, Mountain Raider Division, Short's Broadcasters, Easy Aces, Speeders' Division, B. & W. Division, Harvesters, Little Speeders, Home Guard, the Warriors, Quality Artists, and others. Teams are, and have been, placed in the immediate charge of managers who keep in constant touch with the daily activities of the respective salesmen or representatives of respondent company. Finished pictures made by respondent International Art Co. are delivered by another and different representative designated as "deliveryman." Respondent International Art Co. keeps, and has kept, close watch over the activities of its agents or representatives selling pictures and frames for it and assists and promotes such work actively and continuously. Weekly bulletins reviewing and discussing sales work and containing high-powered sales talks are prepared by the "editorial department" of respondent International Art Co. and distributed among the salesmen, agents, and representatives engaged in the sale of respondent International Art Co.'s products. In these bulletins are set forth lists of leading salesmen and leading teams of salesmen covering weekly, quarterly, and other periods. Leading salesmen are complimented in the bulletin for the records made by them and others are urged to redouble their efforts.

Sales talks containing approved methods of approach and convincing arguments to be used in contacting prospective purchasers of pictures are likewise prepared and furnished by respondent International Art Co. for distribution and use among its salesmen.

PAR. 3. Respondent International Art Co. makes its pictures in the following manner: A negative is made of a family photograph furnished to the agent by the purchaser or customer. This negative is then used to make a photographic enlargement of the original photograph. This photographic enlargement is then tinted or colored generally by the use of crayons or pastels in accordance with memoranda which have been written by the salesmen or representatives on the back of the original photograph. Respondent International Art Co. makes these enlarged tinted photographs at an average cost of about \$1.25, with 24 cents representing cost of glass and back. Frames range in cost from 75 cents to \$1.75. These pictures and frames are then, in turn, sold for as much as the agent or solicitor is able to obtain for them in a given locality or instance. Pictures are made in an unusual hexagonal shape necessitating a type of glass and

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frame that can only be obtained by the purchaser from the respondent International Art Co.

Each salesman enters into a contract with respondent International Art Co. covering his contractual duties, obligations, and remuneration in connection with his sales work. Daily records for the use of salesmen and those delivering pictures are furnished by respondent International Art Co. under its corporate name. Salesmen or solicitors, as compensation, receive a commission on each number or group or orders termed a "count." Salesmen, or agents, endeavor to obtain a cash deposit on each order, usually one third, and purchasers unable to make cash payments sign judgment notes in favor of respondent American Discount Co. agreeing to make payments on specified dates. A signatory of each such note authorizes any attorney, in case of default, to confess judgment against him without process, for any unpaid amount, together with costs and attorney's fees, and further consents to the levying of immediate execution against his properties and effects. A carrying charge of \$1 is also added to each such note.

Respondent International Art Co. causes orders or contracts for pictures to be taken by its agents and representatives on printed forms provided by said respondent bearing the name of the company and its address across the top thereof, and in such order the customer requests the International Art Co. to make a "finely finished painting" from a photograph furnished by the customer. Said orders are addressed to respondent, International Art Co., by the purchaser, or customer, and are duly signed by him and countersigned or endorsed, as having been received, by the particular company salesman or representative taking the order.

Said order blanks or forms employed by the agents or solicitors of respondent, International Art Co. in obtaining contracts for pictures to be made by said company, in addition to carrying the Chicago address of respondent International Art Co. set forth also the names of such foreign cities as Calcutta, Montevideo, Santiago, Johannesburg, and Buenos Aires, and a cable address reading "Inartco," thereby creating, and intending to create, in the minds of purchasers the impression or belief that respondent International Art Co. enjoys an important international business with branch offices or business connections in foreign cities located in South America, Africa, and Asia.

Purchasers of pictures are given to understand that they are contracting or dealing with a duly constituted agent of the International Art Company of Chicago, Ill. Each agent or salesman is furnished by said company with an identification card or card of credentials to

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be presented or exhibited by him when interviewing prospective purchasers. Equipment is also furnished its agents or solicitors by the said International Art Co. for use in soliciting orders in its behalf. Solicitors or agents are likewise furnished by the said respondent company with forms or blanks for use in case the work made in pursuance of orders by them proves unsatisfactory and pictures are to be returned for such reasons.

PAR. 4. Salesmen, agents, or representatives soliciting orders for and on behalf of the respondent International Art Co. for pictures to be made by such company are given full and complete instructions by such company as to the representations to be made by them upon approaching or contacting prospective purchasers of pictures. Said agents are instructed to represent, and do represent, and have represented, that the company is appointing a limited number of persons in the particular city, town, or locality to be its private exhibitors, and that a new design of painting is being introduced there. Attention is to be called to prizes for its work won by the company at public exhibitions. Alluring samples of respondent's work, done in oil, to be duplicated for the prospect, are exhibited to him and the prospect is informed that the company won first prize for its pictures because of the beauty of its new panel design and for its rich colorings, bringing out every feature clearly and distinctly. Respondent's agents and solicitors further represent that the company's artist has consented to paint a particular family size portrait for a stated sum, in order to introduce the new pastel paintings. Request is then made for inspection of family photographs, and the prospect is told that while the company has consented to paint a picture, like a sample for a stated price, always highly excessive, inasmuch as the purchaser is to be appointed a company exhibitor at that place, the company will make him a similar painting for just the cost of materials, packing and handling, namely, \$5. In return for this concession, the prospect is informed that he is expected to exhibit the picture in a prominent place in his home.

In further connection with said selling campaign and instructions therefor, respondent International Art Co. instructs its agents to represent that in order to keep everybody happy they have arranged an old-fashioned voting contest. A box containing a number of slips of paper attached to a wire and sealed is then exhibited. It is represented that most of these slips are blank and some are trade checks; that each customer is allowed two trials; that if they draw blanks they do not win, but that if they are fortunate enough to draw a trade check such check pays half on a painting of a member of the family or some near relative, or a group. Agents are further in-

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structed to represent in this relation that there is a further big "prize" to be obtained; that if the customer gets a red or blue seal certificate he obtains an additional painting of another member of the family or group absolutely free, or, if desired, he is allowed to have this one for one-fourth regular price and is given credit for one free picture. The customer draws, and finally and invariably draws a red seal certificate allegedly giving him one picture free, and is thereupon congratulated by the agent for his great luck. Said apparent lottery drawing feature is invariably used on instructions by each salesman or agent representing International Art Company in soliciting business for it in the respective States of the United States.

Said alleged "drawing" was, and is, a sham device conceived for the sole purpose of making prospective purchasers believe that if they draw lucky numbers they will have the advantage of obtaining pictures at prices below those charged ordinarily to other customers, when in truth and in fact each purchaser, unknown to the other, is approached in the same way through said scheme and beguiled into believing that he is an exceptional one favored by fortune.

PAR. 5. A crayon is a pencil-shaped piece of colored clay, chalk or charcoal used for drawing upon paper. A crayon drawing is the act or art of drawing with crayons.

A drawing is a representation produced by the art of drawing; a work of art produced by pen, pencil, or crayon.

The pastel, in art, is a colored crayon made of pigments ground with chalk and compounded with water into a sort of paste. A drawing made with a colored chalk or crayon is called a pastel, as is also the art of drawing with colored crayons.

Paint is defined as a substance used in painting composed of a dry coloring material intimately mixed with a liquid vehicle. A painting is a likeness, image, or scene depicted with paints without the aid of photography.

A water color is a painting with pigments for which water, and not oil, is used as a solvent.

A portrait, in its ordinary accepted meaning, is a picture of a person drawn from life, especially a picture or representation of a face; a likeness particularly in oil.

An oil painting is a painting done by hand with brushes in plastic oil colors on canvas, or other material, without the aid of photography.

PAR. 6. In pursuance of respondent International Art Co.'s sales activities, its agents and salesmen have represented and sold, and represent and sell as "genuine hand-painted oil portraits," "oil paintings," "finely finished paintings," "hand paintings" or "original

paintings," pictures which were merely photographic enlargements, tinted, or colored.

In selling and offering for sale said photographic enlargements, the said respondent's agents and representatives exhibit, and have exhibited, to prospective purchasers handsome oil painted or other type of hand-painted samples or exhibits of finer quality of work, done by a different method than that used in making the pictures which were ultimately delivered to the said purchasers. Said colored photographic enlargements sold as aforesaid have not only been represented as "hand-painted oil portraits," "oil portraits," "oil paintings," "finely finished paintings," "hand paintings" and "original paintings," but they have been further represented as possessing a sales price comparable to prices obtaining in the case of genuine oil paintings of similar size, being represented variously as worth \$60, \$45, \$40, \$30 and similar prices.

In truth and in fact, the pictures so represented and sold on behalf of respondent International Art Co. are not, and never have been, oil paintings, or water-color paintings, or hand paintings, or original paintings, or any work of art produced by the art of drawing, or drawn from life, but, on the contrary, are, and have been, merely cheap photographic enlargements of photographs, tinted or colored by the use of pencil or crayon, or with the aid of an air-brush, and, in no instance, by the use of oil paint. The sales prices represented for respondent's pictures by sales representatives of respondent International Art Co. were and are fictitious and greatly in excess of the prices at which such tinted photographic enlargements were, and are, ordinarily sold, or were ever intended or contemplated to be sold.

PAR. 7. In further connection with the sale of its pictures and frames, and with a view in particular of obtaining orders for baby pictures, agents of respondent International Art Co. have represented that a large daily paper in the city of Chicago was conducting, or would conduct, a baby contest and that pictures made by respondent International Art Co. of babies were then entitled to be entered and would be entered by the International Art Co. in such contest.

In truth and in fact, no arrangement had been made by the respondent International Art Co. to enter in a baby contest, baby pictures made, or to be made, by the International Art Co., and no large Chicago daily was conducting, or was to conduct, a baby picture contest.

PAR. 8. In further connection with this sale of said pictures and frames to purchasers in various States of the United States, respondent International Art Co., with a view to inducing the purchase of its pictures by residents of particular cities or towns, represented that

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the company planned to open a branch store or establishment in the particular city or town in question, in which event the price of pictures would be materially increased over the price then offered by the agent.

Further, in connection with the sale of its products, the International Art Co., through its agents, undertook, at the time contracts were entered into, to furnish picture frames at certain specified prices, and, thereupon, when a further and different agent delivered the picture, a higher and different charge was demanded for a frame which, it developed, could only be bought from the International Art Co. owing to the peculiar hexagonal shape of the picture as made.

In truth and in fact, the International Art Co. did not intend to open, and did not open, branch offices in the cities or towns where its agents were selling pictures, and, further, respondent International Art Co. did not sell, and did not intend selling, picture frames at the prices originally quoted.

PAR. 9. In case of controversy, for any reason, with a purchaser of a picture, where the purchaser had given a note to the American Discount Co. for the unpaid balance due on a picture, respondent International Art Co. made it a practice of avoiding any further responsibility in connection with its contract by referring the purchaser to the American Discount Co., and creating the impression in the mind of the purchaser that by reason of the fact that the purchaser had given a judgment note in favor of the American Discount Co., the International Art Co. had been removed from the situation and was no longer involved in any contractual relationship with the purchaser. In this connection, use was made of such statements and declarations as:

Your matter is out of our hands, as you have your note with the American Discount Company. Your complaint should be addressed to the American Discount Company.

* * * We are not interested, as we sold your note to the American Discount Company. You will have to have all your dealings with them. However, we advise you not to return the painting without their permission.

In connection with this same representation, the American Discount Co. would advise the purchaser that it had bought the note of the purchaser or customer, and had paid its money therefor and would look to the customer for payment of the note.

In truth and in fact, the International Art Co. and the American Discount Co., while technically possessing separate corporation entities, are, and have been, one and the same, each being owned, organized, and operated out of the same address in Chicago by John C. Kuck, the moving spirit in the business of the International Art Co.,

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and the American Discount Co. had not bought the judgment note in question by discount or otherwise and had not paid the International Art Co. any sum of money therefor, the transaction in each instance being merely recorded by a fiction of bookkeeping. The purchaser of a picture, in cases where a note had been given for an unpaid balance, thus found himself cut off from dealing with the company with which he had contracted for a picture, and was remitted instead to a controversy with a collection agency adjunct which held a judgment note against him.

PAR. 10. In further connection with the operation of its business plan, as the same related to the collection of moneys alleged to be due for pictures, the International Art Co., through its dummy corporation and collection agency, American Discount Co., resorted to various methods of frightening or intimidating people into the further payment of money claimed to be due for pictures. In this connection, the American Discount Co. made a practice of writing offensive letters to purchasers of pictures. These letters were issued in serial form, a particular form or number in the series being used to cover a given situation, the failure to pay the note being treated, at first, as an oversight. The following, among other statements, were, and are being made in letters written by the American Discount Co. to purchasers of pictures from the International Art Co.:

Neglect to pay an honest debt not only leads to trouble, loss of time and money, but to a reputation for unfair dealing.

The law makes it cost more to beat a creditor out of an honest claim than to pay.

* * * * *

When our client extended credit to you, it was thought that you would keep your word. We, too, were of the same opinion. You deceived us both.

You are surely not dead of every sense of uprightness.

PAR. 11. The pictures or photographs which were secured from prospective purchasers by the agents and representatives of respondent International Art Co. for the purpose of having "paintings" made from them were, in most instances, pictures of members of the family, or dear relatives, and many such pictures could not possibly be duplicated. The photographs also furnished to respondent International Art Co. by its customers possess, and have possessed great sentimental value. In making contracts with its customers, the International Art Co. inserts therein a clause to the effect that no countermand would be accepted. In case of a controversy as to alleged misrepresentation as to the character or quality of the work done, or for other reasons justified in the mind of the purchaser, the respondent International Art Co. did and does insist upon holding the pur-

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chaser to the letter and terms of the contract, and, as a means of enforcing compliance with the contract in every instance, respondent International Art Co. did and does refuse to return the valued family photograph until the money claimed to be due has been paid to respondent International Art Co. Under such type of duress, many customers who were dissatisfied with the character or quality of the picture made for them, and who assert, and have asserted, misrepresentation in connection therewith, have been forced to go through with the contract in order to obtain the return of a treasured family photograph.

PAR. 12. In truth and in fact, the various statements and representations made by the International Art Co., through its agents and representatives, in selling and offering for sale their pictures in cities, towns, and communities of the respective States of the United States, were, and are, false, deceptive, and misleading in the following, among other particulars:

1. The respondent International Art Co. does not have, and has not had, a branch office, or branch offices, in the cities of Calcutta, Montevideo, Santiago, Johannesburg, and Buenos Aires;

2. No limited number or other number of purchasers are being, or have been, appointed as private exhibitors for respondent International Art Co. in the cities, towns, and communities in which it sells pictures;

3. Respondent International Art Co. has not introduced and is not introducing, in connection with its sales work, any new design of painting;

4. Prizes in art have not been won by respondent International Art Co. in any public exhibition;

5. Samples or exhibit pictures shown to prospective purchasers by agents and salesmen of respondent International Art Co. are not the same quality and workmanship as the finished picture delivered to the purchaser by the representative of the International Art Co.;

6. Pictures represented and sold by respondent International Art Co. are not, and never have been, "genuine hand-painted oil portraits," "oil portraits," "oil paintings," "finely finished painting," "hand paintings," or "original paintings";

7. Pictures represented and sold by the International Art Co. do not possess, and have never possessed, the quality, characteristics or the value of oil paintings attributed to them by the agents and representatives of said International Art Co., but, on the contrary, comprise a cheap, inferior product costing around \$1.25 each;

8. Respondent International Art Co. has not entered, and is not entering, baby pictures made by it in any baby picture contest, and

no leading daily paper of Chicago is now, or has been, conducting any such contest;

9. Respondent International Art Co. has not opened, and has not intended or purposed to open, branch offices or studios in the various cities and towns visited by its salesmen and representatives while obtaining contracts for pictures;

10. Picture frames have not been furnished to purchasers at the prices originally promised or stated by respondent International Art Co.;

11. Respondent International Art Co. has not actually sold to the American Discount Co. judgment notes signed by purchasers of pictures, and the American Discount Co. had not paid actual cash to the International Art Co. for the alleged purchase of any such notes.

PAR. 13. There are, among the competitors of respondent International Art Co., described in paragraph 1 hereof, corporations, partnerships, firms and persons who are engaged in the sale of tinted enlargements of photographs and of frames therefor who do not employ and maintain the practices as set forth in paragraphs 3 to 11 of this complaint, but who truthfully represent their products and honestly vend the same, and there are also, among the competitors of the respondent International Art Co., corporations, partnerships, firms, and persons engaged in the business of painting portraits who truthfully represent their products as being paintings.

PAR. 14. The use by the respondents International Art Co., American Discount Co. and John C. Kuck of the said practices as set forth in paragraphs 2 to 11 of this complaint, unfairly diverts trade from competitors and thereby substantial injury has been done, and is being done, by respondents to substantial competition in interstate commerce. By the use of the within described false and misleading representations, respondents have deceived, and are deceiving, the public concerning the quality and value of their products sold as hereinbefore described, and have thereby induced, and are inducing, the public to purchase such products under the erroneous belief that same are, and were, high-grade quality paintings and picture frames of exceptional merit and value.

PAR. 15. The above alleged acts and practices employed by said respondents as aforesaid are all to the prejudice of the public and the respondents' 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 the Federal Trade Commission Act, the Federal Trade Commission, on April 15, 1936, issued and served its complaint in this proceeding upon respondents International Art Co. and American Discount Co., corporations, and John C. Kuck, an individual, charging them 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 respondents' respective answers thereto, testimony and other evidence in support of the allegations of the complaint were introduced by Marshall Morgan, attorney for the Commission, and in opposition to the allegations of the complaint by Albert H. Fry, attorney for respondents, before W. W. Sheppard, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding came on for final hearing before the Commission on the said complaint, the answers thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto, and the oral arguments of counsel aforesaid; and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes these its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, International Art Co. and American Discount Co., are corporations, organized, existing, and doing business under and by virtue of the laws of the State of Illinois. The former was organized in 1923 and the latter in 1931. Both corporations have their office and principal place of business located at the same address in the city of Chicago, Ill. The two corporations use different addresses, the American Discount Co. using the address Orleans-Huron Building, Chicago, Ill., and the International Art Co. using the address 325 West Huron Street, Chicago, Ill. Number 325 West Huron Street in Chicago, Ill., is in fact the address for the Orleans-Huron Building and the functions of each corporation are carried on at the identical address. The two corporations occupy the same office with the desks and other equipment used by each separated only by an aisle.

The officers of the International Art Co. are John C. Kuck, president, Frank Olker, vice president and treasurer, and William A. Bopp, secretary. The officers of the American Discount Co. are John

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C. Kuck, president, Mrs. John C. Kuck, vice president, and Frank Olker, secretary and treasurer.

Respondent International Art Co. is engaged in the business of producing and offering for sale and selling tinted or colored enlargements of photographs and frames therefor. Respondent American Discount Co. was organized, and is used, for the purpose of collecting any unpaid indebtedness due on pictures sold by the International Art Co. to its customers.

Respondent John C. Kuck is an individual who owns the controlling interest in each of the respondent corporations. In fact, he owns almost the entire outstanding stock of each corporation. He directs and controls the sales policy and general business methods pursued by said corporate respondents, as herein described, and has full control and management over the district managers, salesmen, and other representatives of the respondent International Art Co.

PAR. 2. In the course and conduct of its business of offering for sale and selling tinted or colored enlargements of photographs and frames therefor, the respondent International Art Co. has caused colored enlargements of photographs and the frames therefor, when sold, to be transported from its place of business in Chicago, Ill., to purchasers thereof located at points in States of the United States other than the State of Illinois. In the course and conduct of such business, respondent International Art Co. is in competition with other corporations and with partnerships, firms, and individuals likewise engaged in offering for sale and selling in commerce among and between the various States of the United States and in the District of Columbia enlargements of photographs, pictures and frames and other products similar to those sold by it in similar commerce.

Respondent International Art Co.'s pictures and frames are sold to members of the public by crews of solicitors and salesmen traveling throughout the various States of the United States and working under the supervision of a crew manager or district manager. There are some 25 or 30 such managers operating crews throughout 15 to 18 States of the United States. Working under such managers are approximately 150 to 200 salesmen. Salesmen are usually selected by the respective managers but some salesmen are selected directly by the respondent International Art Co.

The solicitors, salesmen, deliverymen, district managers, and other representatives selling the respondent International Art Co.'s colored enlargements of photographs, and frames therefor, to members of the purchasing public, are agents for the International Art Co. and are accepted and dealt with as such by the purchasing public. Each manager and salesman is supplied by the International Art Co.

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with, and carries and presents, a card certifying him to be "a duly accredited representative of the International Art Co., 325 West Huron Street, Chicago, Ill., authorized to show samples and to take orders for future delivery in accordance with the provisions of the interstate commerce laws." On the back of this card, it is stated that the bearer is engaged in interstate commerce by reason of soliciting the sale of goods on behalf of individuals or firms doing business outside of the State.

Respondent International Art Co. also furnishes all salesmen and other representatives with contract forms or order blanks, each order being directed and addressed to International Art Co., and containing the following language and provisions:

International Art Co.

325 Huron St.
Chicago, Ill., U. S. A.

Cable Address
INARTCO

----- 193---

You will please make for the undersigned, from the photograph delivered to your representative this day, -----, finely finished painting ----- and deliver the same to me on or about the ----- day of -----, 19--, the painting ----- to cost me \$-----.

Amount paid your representative \$-----, leaving a balance of \$-----, which I agree to pay at the time of delivery.

The Above Price Does Not Include Frames or Glass. Countermands Not Accepted.

This order is given you upon the further consideration that your company will deliver the paintings so ordered in suitable frames, which the undersigned is entitled to accept upon payment of a reasonable price if the frames are satisfactory. In the event the undersigned does not accept frames and pay for same, they are to be delivered forthwith to your company's deliveryman.

Received by ----- Customer -----
Representative.

The above form of contract is invariably employed by such salesman or representative taking orders to be executed by respondent International Art Company.

Based upon the testimony of customers of the International Art Co. and upon the general representations of the respondents made both directly and through its agents, salesmen, and representatives, and also by reason of the use of the credential cards, contracts, and order blanks above described, the Commission finds that the respondents, as well as their salesmen and other representatives soliciting orders for pictures and frames therefor, have customarily represented that such customers are dealing direct with the respondent International Art Co. and are purchasing such pictures and frames direct from the International Art Co.

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PAR. 3. For the purpose of selling the respondent International Art Co.'s colored enlargements of photographs and frames therefor, and inducing purchasers thereof to sign contracts without understanding the nature, terms, and conditions thereof, salesmen and other representatives of respondent International Art Co., with the knowledge, acquiescence, and active cooperation of the respondents International Art Co. and John C. Kuck, by the use of standardized sales talks furnished by the respondents, make false and misleading representations as follows:

1. Salesmen and other representatives of the respondent International Art Co., traveling in crews, visit homes in towns, villages, and rural communities in the United States, and when calling upon prospective purchasers exhibit several samples of attractively colored specimens of the International Art Co.'s work, enclosed in glass. The prospective purchaser's attention is called to one of these specimens and he is informed that said picture was awarded first prize; that for advertising purposes and because of the demand for this picture the International Art Co. had arranged for their artist to paint this particular family size, which would be limited to a few people in each locality for exhibition purposes. The prospective purchaser is then informed, in many instances, that by reason of said advertising feature the prospective purchaser will be given the picture for the actual cost of materials or the actual cost of "materials and delivery."

2. Said salesman particularly calls the prospective purchaser's attention to the beauty of the work, its finish, and to the natural colors of the hair, eyes, complexion, and clothing. In typical sales talks such salesmen and representatives call attention to their "New Hexagon Design * * * 10 by 15 inches in size," and state that work of the kind exhibited "is quite expensive and usually sells for \$30 a picture," without frame or glass. On some occasions these pictures are priced at \$40, \$60, \$75, and even as high as \$100.

3. Invariably the pictures are represented and referred to by the respondent International Art Co. and by its various salesmen and representatives as "oil paintings," "paintings," "hand-painted," and "finely finished paintings."

4. Said salesman then informs the prospective purchaser that the completed "painting" furnished by the International Art Co. will be the same as the sample exhibited, that he is selling the picture only, but that when delivered it will be framed, and that said prospective purchaser need not take the frame unless desired.

5. In some cases where the possible subject is a child or baby, said salesman informs the prospective purchaser that the Chicago Tribune

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is preparing to hold a baby contest and that the International Art Co. has made arrangements to enter its pictures in said contest.

6. In furtherance of said fraudulent sales plan, and for the purpose of convincing the prospective purchaser that said colored enlargement is being sold only to a selected few, at a price greatly reduced and less than is being paid by other purchasers, the prospective purchaser is then introduced to the "draw," described by the salesman as being an "old-fashioned voting contest something like you have at the church and social affairs." The so-called "contest" or "draw" consists of certificates enclosed in envelopes. These certificates, as a general rule, are designated as "red seal certificates" and "blue seal certificates." The "red seal certificates" reads, "One additional mezzatone painting absolutely free"; the "blue seal certificate" does not definitely state what the prospective purchaser is entitled to receive, other than that said prospective purchaser is entitled to receive and take advantage of a special introductory offer, and reads as follows:

International Art Company

325 W. Huron St.

Chicago, Illinois

For the purpose of advertising OUR NEW PAINTING exclusive design, and extending our business

The Original Holder of This

BLUE SEAL CERTIFICATE

is entitled to receive and
take advantage of

[SEAL]

Our Special Introductory Offer

THIS CERTIFICATE IS NON-NEGOTIABLE AND REDEEMABLE ONLY
AS STIPULATED ABOVE

ISSUED TO-----International Art Co.

By means of the wording of the so-called "blue seal certificate," the salesman or representative of the respondent International Art Co. can, and does, make such representations as to the benefits of such certificate as the conditions and circumstances may to him indicate.

The usual and customary representation made by said salesman or representative is that the prospective purchaser on drawing a "red seal certificate" is entitled to one picture for \$15 and a second one free. If a "blue seal certificate" is drawn, the usual representations are that prospective purchaser will receive two pictures for the special price of \$15; or that said prospective purchaser will receive a picture of the same quality for one-half the special introductory offer of \$15, or \$7.50. The salesman can, and does, so manipulate the drawing that the prospective purchaser always wins and the final result of said drawing is that the so-called "lucky" purchaser, regardless of the form of certificate selected, receives either two pictures for \$15 or

one picture for \$7.50. On some occasions the said salesmen or representative informs said prospective purchaser that said "blue seal certificate" drawn entitles such purchaser to one picture free upon payment of merely the cost of materials, postage, etc., in the amount of \$7.50.

(7) The delivery of said picture is not made by said salesman but by a representative of the International Art Co. known as the "deliveryman," whose duties are to collect the balance due on the picture delivered and to sell the customer a frame for said picture. Before calling on the purchaser said deliveryman notifies the purchaser of the approaching delivery by means of postcards, of which the following is typical:

Your painting will be delivered on or between the _____ and the _____ of _____.

International Art Company

When a call is made by the deliveryman, he presents the finished picture to the purchaser fully framed in the hexagon design frame and begins a standardized sales talk in an attempt to sell the frame, making a charge for such frame in varying amounts.

If the purchaser objects to the quality, design, or price of the frame, although previously advised that there was no obligation to accept said frame, said purchaser is now, and for the first time, informed, by said deliveryman, that due to the odd design no store carries same in stock and that the International Art Co. is the only one that furnishes frames of this particular design. The purchaser is further informed that by reason of the shape of the picture it cannot be satisfactorily fitted into any other shaped frame and if retained unframed said picture would quickly deteriorate. As a result of these representations the deliveryman usually succeeds in selling a frame for an exorbitant price, often charging as much as \$22.50 to \$25 each for said frames.

If the purchaser does not have sufficient cash to pay the balance due on said picture and cost of said frame, the said deliveryman then presents a judgment note furnished him by said International Art Co., payable to the American Discount Co., for the signature of the purchaser, covering the balance due plus \$1 carrying charge.

PAR. 4. Based upon the testimony of customers of the International Art. Co. and upon the testimony of the officers, salesmen, and other representatives of said company, and based also upon the testimony of photographers who color photographs and artists who paint pictures, the Commission finds that the finished photograph delivered by the respondent International Art Co. is not in accordance with the sample displayed by the salesmen; that the picture exhibited or

any other picture produced by the International Art Co. never won a prize in any competition; that the International Art Co. does not and never has limited the sale of said pictures to a few selected customers in any given territory; that the picture or similar work does not now and never has sold for the price of \$30, \$40, \$60, \$75 and even as high as \$100, but that the usual and regular price charged customers by said International Art Co. is \$7.50.

The Commission further finds that the respondent International Art Co. was not engaged in a special advertising campaign, and that the prices quoted for said pictures were not special prices based upon advertising or a special introductory offer but were the regular prices charged in due course of business over a long period of time. The prospective purchaser is not given a picture at a special or cost price but instead is charged an exorbitant price therefor. The photographic enlargements used by the International Art Co. are furnished them by a Chicago photographer who charges them 25¢ for each enlargement, and the so-called artists who complete the coloring of said pictures can do from 25 to 30 a day. The entire cost of finishing a picture such as delivered by the respondent International Art Co., based upon cost of similar work, is from 75¢ to \$1.50.

The Commission further finds that the respondent International Art Co. does not now and never has used oil paint in the finishing of said photographs, but instead the materials used are comprised entirely of crayon, pastel, and water color.

The Commission further finds that a painting, as understood by photographers who color photographs, artists who paint pictures and the general public, is an original representation by the painter of a design, image or object on a surface by means of paint, either pastel, water color, or oil; a free-hand image painted directly on the surface without the intervention of any mechanical means such as a camera. This is the conception which the general public have of the term "painting" and is what they expect to get when a painting is purchased.

The Commission further finds that the pictures sold and distributed by the respondent International Art Co. are not "paintings." Said pictures in no way conform to the established belief of the public as to what constitutes a painting, nor do said pictures constitute paintings as understood by photographers who color photographs or artists who paint pictures. The pictures sold and distributed by the respondent International Art Co. are, in fact, colored photographs produced by making a photographic negative of the photograph furnished by the customer. An enlargement is then made from the negative on specially prepared photographic paper containing an

emulsion which enables it to take dry color and also to absorb liquid color. This enlargement is then built up by the use of crayon and pastel applied by hand and water color by use of an air brush.

The Commission further finds that the International Art Co. never had an arrangement with the Chicago Tribune to enter its pictures in any baby contest nor was any baby contest in progress or being contemplated by the Chicago Tribune at the time such representations were made.

The Commission further finds that the alleged "draw" is a fraudulent scheme conceived for the sole purpose and with the result of inducing prospective purchasers to believe that if they draw lucky numbers they will have the advantage of securing pictures at prices greatly below the prices respondent International Art Co.'s other customers must, and do, pay for them, and that they will receive said pictures to the exclusion of certain other people in the same locality. In fact, however, every prospect is approached in the same way and all pay the same price. By means of this scheme members of the purchasing public are beguiled into believing that they are the exceptional few whom fortune has favored. As a result of the representations of respondent's salesmen and representatives in relation to the "draw", customers considering that they had been lucky and had won a distinct advantage over other customers in the same locality were thereby induced to enter into a contract for the purchase of one of respondent's pictures. The Commission further finds that by reason of the use of said "draw" the International Art Co. does not give said purchaser a picture free, or without additional charge, but, as a matter of fact, such purchaser is sold two pictures for the regular price of \$7.50, and the cost of said so-called "free" picture is included in the regular price of \$15 for two of said pictures.

The Commission further finds that the sales plan designed by the respondents, which provides for the salesman selling only the picture and a separate party known as a deliveryman delivering and collecting for the picture and selling the frame, is solely for the purpose of and has the effect of misleading and forcing the purchaser to buy something which he did not originally intend. The special design of frame in which the picture is delivered cannot be duplicated except by the International Art Co. At the time the picture is sold, the purchaser's attention is not called to this difficulty of duplication of the frame but instead the purchaser is led to believe that the frame may be rejected on delivery and purchased elsewhere. As a result the purchaser is forced to deal with the respondent International Art Co. in the purchase of said frames. By this method of dealing in frames the respondents have placed, and are placing, in the hands

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of their representatives and deliverymen a means whereby said representatives and deliverymen can, and do, sell said picture frames for an exorbitant amount. The frames sold by said representatives and deliverymen for as high as \$22.50 to \$25 are made for the respondent International Art Co. by the Metropolitan Picture Frame Co. of Chicago. The prices charged by the Metropolitan Picture Frame Co. on delivery of said frames to the respondent International Art Co. range from 45¢ to \$1.75 and \$2 each.

The Commission further finds that all of the representations by the salesmen and representatives of the respondent International Art Co. were made with the knowledge, acquiescence, and active cooperation of the respondents and respondents' salesmen and representatives for the purpose and with the result of selling the International Art Co.'s colored enlargements of photographs and frames therefor. The respondents and said salesmen and representatives knew these representations to be false and misleading. The respondents further aided and abetted in the furtherance of said fraudulent sales plan and representations by furnishing said salesmen and representatives with standardized sales talks containing the false and misleading representations hereinbefore set out for their guidance.

PAR. 5. After delivery of the finished picture to the purchaser, if said purchaser happens to be one who has only partially paid for a picture and has signed a judgment note to the American Discount Co. for the balance, and such person has any objection or complaint by reason of the quality, design, or any other cause, and writes or communicates with the International Art Co. relative to said objection and demanding an adjustment of the account, such complaint is answered through the medium of a form letter sent out by the respondent International Art Co., giving the complaining purchaser to understand that the matter was out of its hands and that the matter had been turned over to the American Discount Co. If the purchaser then communicates with the American Discount Co., he is informed by said company by a letter containing the following or some similar statement:

We are a finance house and have discounted your note in favor of the International Art Company, from whom you made the purchase. In other words, we paid out our money and must be reimbursed or we will be forced to take legal action which will cost you an additional \$10 court cost plus attorney's fees. Your signature appears on this note we have in our possession and same must be paid. You must remember you signed a judgment note.

We do not under any circumstances accept the return of merchandise for credit and anything returned to us will be absolutely refused.

By means of such correspondence purchasers of respondents' products are further misled and deceived by respondents' representa-

tions that the American Discount Co. is an innocent holder for value of the contracts entered into between said purchasers and the International Art Co. and are thus cut off from communicating with the respondent International Art Co. with which their contracts have been concluded in regard to the character, quality, price, finishing, delivery, or other material aspect of the work covered and comprehended by such sales contracts.

In truth and in fact, the American Discount Co. does not pay any consideration to the International Art Co. or any other person for said notes of purchasers and is not in the position of an innocent holder for value. Although the American Discount Co. is a separately organized corporation, its capital stock is almost entirely owned by the respondent, John C. Kuck, who likewise owns practically all the stock of the International Art Co. The Commission finds that the American Discount Co. is, accordingly, a vehicle set up by said respondent, John C. Kuck, for the purpose of forcing payment of notes executed by purchasers on the alleged fiction that the American Discount Co. is an innocent holder for value. The American Discount Co. occupies the same office as the International Art Co. and transacts business solely with the International Art Co.

PAR. 6. There are among the competitors of respondent International Art Co. corporations, partnerships, firms, and persons who are engaged in the sale of colored enlargements of photographs and of frames therefor in commerce between and among the various States of the United States and in the District of Columbia, who do not employ and maintain the practices hereinbefore enumerated and described but who truthfully represent and honestly vend the same, and there are also among the competitors of the respondent International Art Co. corporations, partnerships, firms, and persons engaged in the business of painting portraits and selling paintings in commerce between and among the various States of the United States and in the District of Columbia, who truthfully represent their products as being paintings.

PAR. 7. The use by respondents of the hereinabove enumerated false and misleading representations in connection with the offering for sale and sale of colored photographic enlargements and of frames therefor has, and has had, the capacity and tendency to deceive, and has deceived, purchasers into buying respondent International Art Co.'s products as and for those possessing the characteristics and qualities claimed for them. Respondents, through such methods, have placed, and are placing, in the hands of their managers, sales agents, and deliverymen means of deceiving customers.

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The aforesaid acts and practices of respondents have the capacity and tendency to, and do, divert unfairly to respondents the trade of competitors engaged in selling in commerce among and between the various States of the United States and in the District of Columbia products of the same kind and nature as those of respondents, which products are truthfully advertised and represented.

CONCLUSION

The aforesaid acts and practices of respondents are all to the prejudice and injury of the public and of the respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents thereto, testimony and other evidence in support of the allegations of said complaint and in opposition thereto, taken before W. W. Shepard, an examiner of the Commission theretofore duly designated by it, briefs filed herein, and oral arguments by Marshall Morgan, counsel for the Commission, and by Albert H. Fry, counsel for the respondents, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the said respondents, International Art Co. and American Discount Co., corporations, and their officers and John C. Kuck, an individual, and their respective servants, salesmen, employees, and agents, individual or corporate, in connection with the advertising, offering for sale and sale and distribution in interstate commerce or in the District of Columbia of colored or tinted photographs or enlargements having a photographic base, and of frames therefor, do forthwith cease and desist from:

1. Representing, directly or in any manner, that colored or tinted pictures, photographs, or photographic enlargements are hand-painted or are paintings;

2. Using the terms "oil painting," "portrait painting," "hand painting," or the word "painting," either alone or in conjunction with any other terms or words in any way to designate, describe or refer to colored or tinted pictures, photographs or photographic enlargements or other pictures produced from a photographic base or impression;

3. Representing that any colored enlargement of a photograph has been entered in any competitive competition of paintings or that any

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award has been made to such enlargement in such competitive competition;

4. Misrepresenting that any specified sum is the actual cost of "materials" in a picture, or is the actual cost of "materials and delivery," or otherwise misrepresenting the actual cost of either materials or delivery;

5. Representing that such pictures are being, or will be, sold only to a limited number of customers, or otherwise misrepresenting any material fact concerning the terms and conditions of sale, or the extent to which the sale of such pictures is limited;

6. Representing that pictures submitted to them or photographic enlargements made therefrom will be entered in any baby picture or other picture contest, unless such contest is in fact then being conducted and such pictures or photographic enlargements are eligible for entry therein, or otherwise misrepresenting the existence of any picture contest or the eligibility of customer's pictures or photographic enlargements therein;

7. Representing that a picture similar to sample displayed will be delivered unless in fact the picture delivered is of the same kind, quality, design and workmanship;

8. Representing that they are conducting any special campaign or advertising campaign in any particular place or locality for the purpose of obtaining special exhibitors or for any other purpose, unless such campaign is in fact then being conducted in such locality for such purpose;

9. Representing, through use of a "draw" or voting contest or through use of "lucky" blanks, slips, coupons, or certificates, or through use of any other device, plan or scheme or through any prize contest or special introductory or advertising offer, that any customer thereby would obtain a financial advantage or be entitled to receive any picture free or receive a substantial discount or reduction in the price of any picture or pictures;

10. Representing to the customer that frames can be purchased elsewhere unless the odd design used can in fact be purchased from other sources or unless a standard design is furnished;

11. Concealing from or failing to disclose to customers that the finished picture when delivered will be so shaped and designed that it can only be used in a specially designed odd style of frame which can be procured from the International Art Co. only, and generally at prices equal to or in excess of the prices already charged for pictures;

12. Representing that respondent, American Discount Co., is an innocent purchaser for value, without notice, before maturity, of notes for unpaid balances on pictures sold to such customers by respondent

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International Art Co., or has in good faith discounted such notes or paid out any money in connection with the purchase of such notes;

13. Representing, as the customary or regular prices or values for such pictures and frames, prices and values which are in fact fictitious and greatly in excess of the prices at which said pictures and frames are regularly and customarily offered for sale and sold in the normal and usual course of business.

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

Syllabus

IN THE MATTER OF

MATHIESON ALKALI WORKS, INC., ET AL.

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

Docket 3317. Complaint, Jan. 31, 1938—Decision, Dec. 16, 1938

Where nine corporations engaged in the manufacture of liquid chlorine for commercial purposes, and in the sale thereof directly and through sales agents to purchasers, including towns, cities, and other municipalities, State governments and divisions thereof, Federal Government and divisions thereof, and State and Federal institutions, and representing, in their output, substantially all the liquid chlorine made for commercial and industrial purposes in the United States and sold therein since 1930, and since said year only regular source of supply for purchasers of said product, and prior to 1931, and still, but for acts below set forth, in competition as to price with one another in sale of said product among the various States, Territories and District of Columbia—

Entered into, carried out, and continued to carry out agreement, combination, understanding, and conspiracy among themselves to fix and maintain enhanced uniform prices to be exacted by them from purchasers of such liquid chlorine in commerce among the various States and in said District; and in pursuance of said agreement, etc., and agreements made so to do—

1. Fixed and maintained uniform prices for liquid chlorine sold by them and by each of them; and

2. Divided United States into zones for which they fixed and maintained enhanced uniform prices to be exacted from their purchasers of said product;

With a dangerous tendency to, and with result of, actually hindering and preventing price competition in sale thereof in commerce as aforesaid, increasing prices paid by purchasers thereof, creating in themselves monopoly in sale of said product and in interstate commerce, and of unreasonably restraining such commerce; all to the prejudice of competitors and to the injury of the public:

Held, That such acts and practices constituted unfair methods of competition in commerce within intent and meaning of Federal Trade Commission Act.

Before *Mr. John J. Keenan*, trial examiner.

Mr. Edward L. Smith for the Commission.

Chadbourn, Wallace, Parke & Whiteside, of New York City, for Mathieson Alkali Works, Inc.

Root, Clark, Buckner & Ballantine, of New York City, for The Electro Bleaching Gas Co.

Miller, Owen, Otis & Bailly, of New York City, for Solvay Sales Corporation.

Sage, Gray, Todd & Sims, of New York City, for The Hooker Electrochemical Co.

Reed, Smith, Shaw & McClay, of Pittsburgh, Pa., for The Diamond Alkali Co.