

Syllabus

IN THE MATTER OF

W. M. JACOBSON DOING BUSINESS AS WONDER WOOD-
TEX COMPANY

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

Docket 3675. Complaint, Dec. 23, 1938—Decision, Mar. 8, 1939

Where an individual engaged in sale and distribution of wood pulp articles to retail dealers and operators of gift shops in the various States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of similar articles in commerce and in said District, and including many who do not misrepresent their respective products, sales policies, or methods of doing business—

- (a) Represented, in statements which he caused to be disseminated in commerce among the various States and in said District, that his father was a wealthy retired citizen now engaged, as a hobby, in manufacture of said wood pulp articles sold and distributed by him, and that he was permitted by his father, and as latter's sole sales representative, to sell such articles with and on the understanding that he would not make any misrepresentations relative thereto and would not overcharge purchasers thereof, and invited prospective purchasers to visit his father's large Long Island estate, and gift show conducted by said individual in the Palmer House in Chicago, with all expenses paid by such individual;

Facts being said individual's father had been dead for many years prior to times mentioned, neither he nor his father ever made said articles, and his father did not have Long Island estate, nor did individual in question conduct gift shop, as aforesaid, at the Palmer House or elsewhere, and said statements and representations disseminated as above set forth were false, misleading, and untrue;

- (b) Represented that the prices for which purchasers from him could resell the articles which they thus bought were 50 to 100 percent more than the prices they paid therefor, and that such articles were similar to samples displayed to prospective purchasers, and that said individual had been referred to such prospects by satisfied customers of said individual;

Facts being purchasers could not thus resell such articles, but found it necessary to resell same at the prices paid therefor, articles shipped to purchasers were inferior to samples displayed prior to shipment, and said individual had not been referred to prospective purchasers by satisfied customers as above set forth; and

- (c) Represented that he exchanged articles purchased from him which were not sold readily for other articles which would thus sell, and that purchasers received from him exclusive territory for sale and distribution of his said articles, and that payment therefor could be made by deferred purchase plan whereby time of payment for articles not readily salable would be extended to conform to retail sales thereof, and that promissory notes signed by purchasers were merely evidence of the debt and in no case would be used by him as collateral for a loan or sold to third party;

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Facts being purchasers making such exchanges received back articles inferior in quality and quantity to those exchanged, did not receive exclusive territory for resale and distribution of his said articles, and he did not extend them time for payment of accounts as above set forth, and promissory notes signed by purchasers were resold to finance companies which immediately notified maker of note that same must be paid in full on due date;

With effect of misleading and deceiving members of purchasing public in various States and in said District into erroneous and mistaken belief that such false and misleading statements and representations were true, and into purchasing substantial quantities of his said wood-pulp articles because of such belief, and with result that trade was diverted unfairly to him from his competitors in commerce as aforesaid, who truthfully advertise their respective products, sales policies, and methods of doing business, to the injury of competition in commerce:

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

Mr. Clark Nichols for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that W. M. Jacobson, an individual, trading and doing business as Wonder Wood-Tex Co., and hereinafter referred to as respondent, has violated the provisions of 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, W. M. Jacobson, an individual, is the sole owner and operator of Wonder Wood-Tex Co., with his business address at 308 East Fifty-first Street, Chicago, Ill.

PAR. 2. Respondent is now, and has been, since about the year 1933, engaged in the business of selling wood-pulp articles to retail dealers and operators of gift shops.

PAR. 3. Said respondent, being engaged in business as aforesaid, causes, and has caused, said merchandise, when sold, to be shipped to purchasers thereof located at various points in the States of the United States other than the State from which said shipments are made and in the District of Columbia. There is now, and has been during all the times herein mentioned, a constant current of trade in commerce in the aforementioned articles, sold by the respondent, between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of his business as aforesaid, respondent is, and has been, in substantial competition with other

persons, and with corporations, firms, and partnerships, engaged in the sale and distribution of wood-pulp articles, similar to those sold and distributed by the respondent, among the various States of the United States and in the District of Columbia. Among said competitors are many who did not in any manner engage in the practices hereinafter alleged.

PAR. 5. In the course and conduct of his business as aforesaid, respondent has made, and is still making, certain representations in connection with the sale of the aforementioned articles in said commerce. Among said representations are, and have been, the following:

1. That the father of respondent is a wealthy, retired citizen who is now engaged, as a hobby, in the manufacture of the articles sold by respondent.

2. That respondent's father only permits respondent, as his sole sales representative, to sell said articles with the distinct understanding that respondent will not make any misrepresentations concerning them and will not overcharge the purchasers thereof.

3. That the prospective purchaser was invited to visit respondent's father's large Long Island estate and also the gift show conducted by respondent at the Palmer House in Chicago, with all expenses paid.

4. That the resale prices for which prospective purchasers could sell the articles, which they purchased from respondent, were 50 percent to 100 percent more than the prices at which respondent offered said articles to them.

5. That the articles which respondent would ship to purchasers would be similar to the samples displayed by respondent.

6. That respondent was referred to the prospective purchaser by some satisfied purchaser to whom respondent has previously sold.

7. That respondent would exchange slow-moving articles for other articles more susceptible to ready sale.

8. That the prospective purchaser would receive an exclusive territory for the neighborhood in which said purchaser resided.

9. That the payment for the articles purchased from respondent could be made by a deferred purchase plan, whereby, should said articles not prove readily saleable, the time of payment would be extended according to the retail sales of same.

10. That promissory judgment notes signed by purchasers, in which notes the due dates were not the same as those shown on the orders, were merely evidence of the debt, and in no case would be used as collateral for a loan or sold outright.

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PAR. 6. In truth and in fact:

1. Respondent's father had been dead for many years prior to the times mentioned herein.

2. Neither respondent nor his father has ever manufactured the articles sold by respondent.

3. Respondent's father never had a Long Island estate.

4. Respondent never conducted a gift show at the Palmer House in Chicago or anywhere else.

5. Purchasers from respondent were required to resell the articles which they thus purchased at approximately the same prices they paid respondent.

6. The articles which respondent shipped in filling orders from purchasers were decidedly inferior to the samples which respondent displayed in securing the orders.

7. Respondent was never referred to prospective purchasers by satisfied purchasers of respondent.

8. When purchasers exchanged articles, they received back merchandise inferior in quality and quantity to those which they exchanged.

9. Purchasers did not receive any exclusive territories, because respondent will sell to anyone, wherever located, who would purchase his articles.

10. The time for payments of accounts due by purchasers to respondent was not extended by respondent according to retail sales of respondent's specific articles by the purchasers.

11. When respondent secures the purchaser's signature on a promissory judgment note, respondent sells same at the very first opportunity to a finance company which presumably is an innocent purchaser for value and which immediately notifies the maker of the note, that same must be paid in full on its due date.

PAR. 7. Respondent's representations described in paragraph 5 hereof are false, deceptive, and misleading, were, and are, calculated to, and had, and have, a tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all said representations are true. Further, as a true consequence of mistaken and erroneous beliefs induced by said representations of respondent, a substantial number of the consuming public has purchased a substantial volume of respondent's articles, with the result that trade has been unfairly diverted to the respondent from his competitors and substantial injury has been, and is now being, done by respondent to said competitors in the commerce hereinbefore described.

PAR. 8. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice of the public and of respondent's com-

petitors, and constitute unfair methods of competition and unfair and deceptive acts and practices within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 23d day of December 1938, issued and thereafter served its complaint in this proceeding upon respondent, W. M. Jacobson, an individual doing business under the trade name of Wonder Wood-Tex Co., charging him with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On the 16th day of January 1939, the respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission, having duly considered the matter and being now 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 the conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, W. M. Jacobson, is an individual trading as the Wonder Wood-Tex Co., and having his office and principal place of business at 308 East Fifty-first Street, in the city of Chicago, State of Illinois. Respondent is the sole owner and operator of the business conducted under the trade name Wonder Wood-Tex Co.

PAR. 2. Respondent is now, and has been since the year 1933, engaged in the business of selling and distributing wood-pulp articles to retail dealers and operators of gift shops situated in the various States of the United States and in the District of Columbia. Respondent causes said wood-pulp articles, when sold by him, to be transported from his aforesaid place of business in the State of Illinois to the purchasers thereof at their respective points of location in various States of the United States other than the State of Illinois, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said wood-pulp articles among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is engaged in substantial competition with other individuals and with corporations, firms, and partnerships, engaged

in the business of selling and distributing wood-pulp articles in commerce among and between various States of the United States and the District of Columbia. Among such competitors are many who do not misrepresent their respective products, sales policies, or methods of doing business.

PAR. 4. In the course and conduct of his business, as aforesaid, and in furtherance of the sale of his wood-pulp articles, respondent has caused to be disseminated in commerce among and between the various States of the United States and in the District of Columbia statements and representations relative to his wood-pulp articles, sales policies, and methods of doing business. Among and typical of the statements and representations, disseminated as aforesaid, are the following:

That the father of the respondent is a wealthy retired citizen, who is now engaged as a hobby, in the manufacture of the wood-pulp articles sold and distributed by the respondent;

That respondent's father permits respondent, as his sole sales representative, to sell said articles, but with the understanding that respondent will not make any misrepresentations relative to such articles and will not overcharge the purchasers thereof;

That prospective purchasers of respondent's articles are invited to visit the large Long Island estate of respondent's father and the gift show conducted by respondent at The Palmer House in Chicago, with all expenses paid by respondent;

That the prices for which purchasers from respondent can resell the articles purchased from respondent are 50 to 100 percent more than the prices they pay respondent for such articles;

That the articles which respondent ships to purchasers are similar to the samples of such articles displayed by respondent to prospective purchasers;

That the respondent has been referred to prospective purchasers by satisfied customers of respondent;

That respondent exchanges articles purchased from respondent which are not sold readily for other articles which will sell readily;

That purchasers receive from respondent an exclusive territory for the sale and distribution of respondent's articles;

That the payment to the respondent for the articles purchased from respondent can be made by a deferred purchase plan whereby the time of payment for the articles not readily salable will be extended by respondent to conform to the retail sales of the same; and

That the promissory judgment notes signed by purchasers of respondent's merchandise are merely an evidence of the debt and in no case will be used by respondent as a collateral for a loan, or sold to third parties.

PAR. 5. The aforesaid statements and representations used and disseminated by the respondent, in the manner aforesaid, are false, misleading, and untrue.

In truth and in fact, the father of the respondent is not a wealthy retired citizen who is now engaged, as a hobby, in the manufacture of the articles sold and distributed by respondent.

In truth and in fact, the father of respondent had been dead for many years prior to the times mentioned herein. Neither the respondent nor his father has ever manufactured the articles sold and distributed by the respondent. The respondent's father does not and did not have an estate on Long Island. The respondent has not and did not conduct a gift shop at The Palmer House in Chicago, or at any other location.

The purchasers from respondent do not resell the articles they purchase from respondent at from 50 to 100 percent profit. In truth and in fact, such purchasers have found it necessary to resell such articles at the same prices they paid respondent.

The articles which respondent ships to purchasers are very inferior to the samples of such articles which respondent displays to such purchasers prior to such shipment.

Respondent has not been, and is not, referred to prospective purchasers by satisfied customers of respondent.

Purchasers from respondent exchanging articles with respondent receive back from respondent articles inferior in quality and quantity to those which they exchange with respondent.

Purchasers do not receive from respondent an exclusive territory for the resale and distribution of such articles.

The times for payment of accounts to respondent by purchasers of such articles are not extended in accordance with the resale of such articles by such purchasers. The promissory notes signed by purchasers of respondent's merchandise are resold to a finance company which immediately notifies the maker of the note that same must be paid in full on its due date.

PAR. 6. The aforesaid statements and representations by respondent, used and disseminated in the manner aforesaid, have the capacity and tendency to, and do, mislead and deceive members of the purchasing public situated in various States of the United States and in the District of Columbia, into the erroneous and mistaken belief that the aforesaid false and misleading statements and representations are true and into purchasing substantial quantities of respondent's wood-pulp articles because of said erroneous and mistaken belief. As a result, trade has been diverted unfairly to respondent from his competitors in commerce among and between the various States of the

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United States and in the District of Columbia, who truthfully advertise their respective products, sales policies, and methods of doing business. In consequence thereof, injury has been, and is now being, done by respondent to competition in commerce among and between the various States of the United States and the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices 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 and the answer of respondent, in which answer respondent admits all the material allegation of fact set forth in said complaint, and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, W. M. Jacobson, an individual, doing business under the trade name of Wonder Wood-Tex Company, or under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of wood-pulp articles or other merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly:

1. That either the respondent or his father is engaged in the manufacture or carving of wood-pulp articles.

2. That the respondent conducts a gift show at Chicago or elsewhere, unless and until the respondent does actually conduct such gift show at such place or places.

3. From representing that the price charged the customer by respondent is or will be such an amount that will permit the customer to resell each of the different articles in the list purchased, at a competitive retail price and a reasonable profit, when the price charged by respondent will not permit a resale for such a profit.

4. That respondent's products are similar in quality and quantity to samples displayed by respondent, unless and until such is the fact,

or that respondent has been referred to prospective purchasers by satisfied customers, unless and until such is the fact.

5. That respondent will exchange merchandise more readily salable for other merchandise purchased from respondent.

6. That purchasers of respondent's merchandise receive an exclusive territory for the resale of such merchandise.

7. That the times for payment of accounts due respondent by purchasers are extended in accordance with the date of resale of such merchandise, unless and until such is the fact.

8. That promissory notes taken from purchasers will be extended beyond their due date, or will be otherwise modified, unless such promise of extension or modification is written in the face of the note.

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

IN THE MATTER OF
GEORGE H. LEWIS, TRADING AS ASSOCIATED ARTS,
BLACKSTONE ACADEMY OF FINE ARTS, VAN DYKE
ART ASSOCIATION, AND STERLING ART ASSOCIATION

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

Docket 3681. Complaint, Dec. 30, 1938—Decision, Mar. 8, 1939

Where an individual engaged, under various fictitious trade names and addresses, in selling and distributing tinted or colored enlargements of photographs and frames therefor, through the medium of salesmen, agents, or representatives who—

(1) Worked on a strictly commission basis in crews or groups and under supervision of crew manager or "verifier," in his employ, in visiting homes of prospective customers in the cities, towns, and rural communities of the various States; and

(2) Whom he furnished with identification card or card of credentials, and with cases containing samples of "paintings," and with printed order or contract forms bearing names and addresses of one of trade company names under which he was transacting business, and in which order it was variously certified that customer was entitled to a "Hand Painted" or "Polychrome" or "Colura" convex portrait, of specified size and unframed, for "special producing charge of \$2.95," or "for cost of production, \$2.95," or "for the special advertising price of \$2.95," with payment to be made upon presentation of proof at customer's residence, and with provision in such blank or "certificate" for agent's signature in his representative capacity; and

(3) Who gave purchasers of pictures to understand that they were contracting with duly constituted agent of one or the other of the trade-name companies indicated by trade names employed by said individual as aforesaid, and gave receipts similar in tenor to such printed order or contract form, for particular trade-name company making sale, and induced customer to sign paper promising payment of sum of \$2.95 when proof of portrait was shown to him at his home;

In selling said enlargements and frames therefor to customers in various States, in direct and substantial competition with others engaged in sale and distribution, in commerce among the various States and in the District of Columbia, of tinted or colored enlargements of photographs and frames therefor, and likewise with those engaged in sale of genuine original paintings, including oil paintings and water-color paintings, as aforesaid; through representations of his salesmen and other representatives, made with his knowledge, acquiescence, and active cooperation, and for the purpose of selling said products and inducing purchasers thereof to sign contracts without understanding the nature, terms, and conditions thereof—

(a) Exhibited to prospective purchasers samples of attractively colored specimens of said individual's purported work, with emphasis on its beauty, finish, natural color of hair, eyes, etc., and represented and referred to the pic-