

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-

tures as "paintings," "hand-painted portraits," "Colura portraits," or "Polychrome portraits," and informed prospect that said individual was offering similar portraits or paintings at a "special advertising price" of \$2.95, or at a "reduced price," or for a "special producing price," or for the "cost of production," and that such purported paintings or portraits were worth \$25 or some similar amount, and that completed "painting" furnished by said individual would be similar to sample exhibited;

- (b) Displayed, as above set forth, on its order blanks, contract forms, etc., and conducted his said business under, trade names including such words as "Academy of Fine Arts" and "Art Association," and represented to prospective purchaser that the company, concern, or organization soliciting his order was an art association or association of artists skilled in making portraits, paintings, and similar works of art, and was a member of the National Portrait Association, and induced him to sign order or contract in guise of certificate purporting to entitle him to receive a portrait or painting upon payment only of cost of production, and induced customer to loan agent or representative photograph or snapshot of relative or member of family whose portrait was to be painted, to be used, as represented, as model or guide, to the artist who was to paint the same, and to be returned to customer with completed picture;

Facts being alleged pictures or "paintings" made by said individual were different from and greatly inferior in quality, workmanship, and character to samples exhibited by his agents when soliciting and obtaining contracts for such alleged pictures or "paintings," which, in fact, were not portraits or paintings in any sense of the word, but merely cheap, quickly made, photographic enlargement costing about \$1.25 each, and tinted or colored by use of pastel or crayon, water color, or other powdered pigments sprayed, in solution and largely through use of an air brush and compressed air, upon the photographic enlargement, said alleged portraits or paintings were not sold at special advertising price or at reduced price, or for special reducing price, or for cost of production, but price of \$2.95 thus charged for the unframed photographic tinted enlargement was regular and customary price charged by him for such enlargements, and he or his said business did not operate any association of artists, give work to unemployed artists, employ artists, nor commercialize talents of any of America's foremost portrait artists, and were not, as represented through such trade names and otherwise, members of or sponsored by nationally recognized association of portrait painters, so-called portrait association was either fictitious or long dormant, if existing at all, business conducted by him through aforesaid trade names was merely business enterprise to sell to public for profit cheap, colored, or tinted photographic enlargements and frames therefor, and so-called "certificate" was, in truth and in fact, binding contract containing numerous provisions and representations of binding nature not explained to or understood by customers, and not evidence that he was to receive valuable portrait or painting; and

- (c) Sought to, and usually did, secure orders for frames at exorbitant prices, and usually \$15 or more, through practice, following the theretofore submission to the customer, by employee known as "proof passer" or "framer," of black and white print of original photograph in enlarged form, and collection of the \$2.95 called for by the certificate, and receipt of instructions

from customer as to shading, coloring, and other details for the supposed "painting," of delivering finished picture, fully framed in peculiar octagonal shape and size, by another salesman who made use of coercion, threats, abuse, and misrepresentation of various kinds in endeavoring to sell frame to customer at varying prices, and informed purchaser objecting to quality, design, or price of frame, and who had been previously advised that there was no obligation to buy frame, and from whom it had been concealed that so-called portrait would be delivered in such peculiar form, shape, and size, that it would be impossible for customer to obtain frame to fit it except from said individual and at prices exacted therefor, that said individual or business was the only company that furnished frames of such particular design, and that original order or certificate signed by customer obligated him to frame picture in a suitable manner, and, in many instances, refused to deliver completed picture, previously fully paid for, or original treasured family photograph borrowed from customer, until frame was ordered or claimed balance paid in full;

Facts being said individual's selling methods were directed primarily to accomplish sale of a frame at an exorbitant price, its activities in securing contracts for alleged "portraits" or "paintings," and in filling same were merely "bait" or a "come-on" to "hook the sucker" and enable said individual's high-pressure frame salesmen to contact purchaser and sell frames of cheap and inferior quality at prices which were exorbitant and far above value thereof, through sales accomplished, as aforesaid, by coercive and oppressive acts and practices and representations, including retention, without any such understanding, of original photograph submitted by customer, or of completed portrait, or both, until alleged balance due had been paid or frame was purchased by customer, who neither wished for, desired, nor ordered same;

With effect of misleading and deceiving public as to character of business actually conducted by said individual through use of such trade names and representations, and causing it to confuse business in question with various organizations similar in name or designation which were conducting, or might properly be designated as, art associations or academies of fine art, and with effect, through use of such various false and misleading representations and practices in sale and offer for sale of purported "portraits" and "paintings," of deceiving purchasing public concerning quality and value of his products sold as above set forth, and inducing public to purchase said products under erroneous belief that same were high-grade quality portraits or paintings and picture frames of exceptional merit and value, and of thereby unfairly diverting trade to him from competitors likewise engaged in sale and distribution of tinted or colored enlargements of photographs in commerce, and who truthfully represent their products; to the substantial 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. Merle P. Lyon for the Commission.

Sherriff, Lindsay, Weis & Hutchinson, of Pittsburgh, Pa., for respondent.

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 George H. Lewis, an individual, trading variously as Association Arts, Blackstone Academy of Fine Arts, Van Dyke Art Association, and Sterling Art Association, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, the Commission hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, George H. Lewis, is an individual, residing at 909 Union Avenue, North Side, Pittsburgh, Pa. He does business under the trade names, Associated Arts, Box 843, Pittsburgh, Pa., and Associated Arts, 507 Fifth Avenue, New York City, N. Y.; Blackstone Academy of Fine Arts, 234 West Water Street, Syracuse, N. Y.; Van Dyke Art Association, 271 Erie Boulevard, West Syracuse, N. Y.; and Sterling Art Association, Suite 506, The Arcade, Cleveland, Ohio. The various trade names and addresses hereinabove set out are fictitious names and addresses used for mailing purposes only; the addresses 234 West Water Street and 271 Erie Boulevard West, Syracuse, N. Y., being the principal address of the Seails Copying Co., Inc., a corporation engaged in the business of jobbing picture frames, preparing printed enlargements of photographs, and painting photographs with water colors; the address Suite 506, The Arcade, Cleveland, Ohio, being the address of an art studio of one Frank Thompson, and the address 507 Fifth Avenue, New York City, N. Y., being used merely for lending prestige in the obtaining of business. All orders or correspondence received at said addresses are forwarded to respondent personally at his home address or post office box at Pittsburgh, Pa.

Respondent is the sole owner and operator of the business conducted by him through the medium of the aforementioned trade-name companies, and directs the activities and controls the business policies and practices of each, including the conduct of sales campaigns, character of sales representations made, and all business interviews and correspondence incident thereto.

PAR. 2. Respondent George H. Lewis, trading variously as Associated Arts, Blackstone Academy of Fine Arts, Van Dyke Art Association, and Sterling Art Association, is now and for more than 1 year last past has been engaged in the business of selling and distributing tinted or colored enlargements of photographs, and

frames therefor. Respondent sells his products to customers located in various States of the United States through the medium of salesmen or representatives and causes said tinted or colored enlargements of photographs and frames when so sold by him to be transported from his place of business in Pittsburgh in the State of Pennsylvania to the purchasers thereof located in various other States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his said business, respondent George H. Lewis has been, and is now, engaged in direct and substantial competition with various corporations, partnerships, and individuals likewise engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia, of tinted or colored enlargements of photographs and of frames therefor, and likewise with corporations, partnerships, and individuals engaged in the sale of genuine original paintings, including oil paintings and water-color paintings, in commerce 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 said business, respondent causes agents and representatives employed by him to visit the homes of prospective customers in the cities, towns, and rural communities of the various States of the United States. Said agents or representatives, sometimes called "floaters" or "coxeys," work on a strictly commission basis, living in rooming houses and working from town to town in crews or groups under a crew manager or "verifier," who keeps in constant touch with the daily activities of the respective salesmen, and who is also employed by respondent. Purchasers of pictures are given to understand that they are contracting or dealing with a duly constituted agent of one or the other of respondent's trade-name companies, and each agent or salesman is furnished by respondent with an identification card or card of credentials to be presented or exhibited by him when interviewing prospective purchasers. Equipment, including sample cases containing samples of "paintings," is also furnished by respondent to his agents and representatives for use in soliciting orders in his behalf.

Respondent causes orders or contracts for pictures or paintings to be taken on printed forms provided by him bearing the name and address of one of the trade-name companies under which he is transacting business across the top thereof, and in such order it is variously "certified" that the customer is entitled to a "Hand Painted" or "Polychrome" or "colura" Convex Portrait, 10 by 16 inches in size, unframed, for the "special producing charge of \$2.95," or "for

cost of production, \$2.95," or "for the special advertising price of \$2.95," payment to be made upon presentation of proof at customer's residence. Said order blank or "certificate" is duly signed by respondent's agent in his representative capacity on a line provided therefor. Receipts similar in tenor are signed for the trade-name company by the agent making a sale, and the customer is induced to sign a paper promising to pay the sum of \$2.95 when the proof of the portrait is shown to him at his home.

The form of "certificate" used by respondent in his business under the trade name "Van Dyke Art Association," and used with minor variations under his other trade names, and therefore typical of respondent's usual order blank, is as follows:

Van Dyke Art Association (registered)

271 Erie Blvd. West, Syracuse, N. Y.

NPA National Portrait Association

Certificate for a Polychrome Portrait

All other orders \$25.00. This certificate Entitles the Bearer
----- to one, 10 x 16, Octagon, Convexed,
Polychrome Portrait (without frame) for cost of production, \$2.95.

In a few days, the proof of your portrait will be shown at your home and the cost of production must then be paid. Read this contract—this order cannot be countermanded.

An Association that has commercialized the talents of some of America's foremost portrait artists. We only ask that you appreciate this portrait and be kind enough to display it and recommend it at its value and not the amount you expended for it. All photographs returned with the finished work.

I agree to pay the cost of production, \$2.95, when the proof of portrait is shown at my home.

Signed-----

Address-----

PAR. 5. For the purpose of selling the respondent'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 the respondent, with the knowledge, acquiescence, and active cooperation of the respondent, make false and misleading representations as follows:

Salesmen and other representatives of the respondent, when calling upon prospective purchasers, exhibit several samples of attractively colored specimens of respondent's purported work. The prospective purchaser is told that respondent is offering similar portraits or paintings at a "special advertising price" of \$2.95, or at a "reduced price," or for a "special producing price," or for the "cost of production."

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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. Invariably the pictures are represented and referred to by the said salesman as "paintings," "hand-painted portraits," "Colura portraits," or "Polychrome portraits," and are represented as being worth \$25 or some similar amount.

Said salesman then informs the prospective purchaser that the completed "painting" furnished by the respondent will be similar to the sample exhibited, that the respondent is an art association or association of artists skilled in making portraits, paintings, and similar works of art, and is a member of the National Portrait Association. The prospective purchaser is then induced to sign an order or contract in the guise of a "certificate" purporting to entitle the customer to receive a "portrait" or "painting" upon payment only of the cost of production.

Said salesman then induces the customer to loan him a photograph or kodak snapshot of the relative or member of the family whose portrait is to be painted, and represents that such photograph is to be used as a model or guide to the artist who is to paint the portrait, and will be returned to the customer with the completed picture.

The original order taker is followed a few days later by a high pressure salesman also employed by respondent, known as a "proof passer" or "framer." The "proof passer" submits to the customer a black and white print of the original photograph in enlarged form, and collects the \$2.95 called for by the "certificate" and receives instructions from the customer as to shading, coloring, and other details for the painting which is to be produced.

The delivery of the finished picture is made by still another salesman employed by respondent, who presents the picture fully framed in a peculiar octagonal shape and size, and by means of coercion, threats, abuse, and misrepresentations of various kinds endeavors to sell the frame to the customer at varying prices.

If the purchaser objects to the quality, design, or price of the frame, although previously advised that there is no obligation to buy a frame, he is now, and for the first time, informed that respondent is the only company that furnishes frames of this particular design, and that the original order or "certificate" signed by the customer obligates him to frame the picture in a suitable manner. As a result of such representations, the deliveryman usually succeeds in selling the frame for an exorbitant price, usually \$15 or more.

If the purchaser refuses to purchase a frame, the deliveryman in many instances refuses to deliver the completed picture, which has been previously fully paid for, or the original treasured family photo-

graph borrowed from the customer, until a frame is ordered or a claimed balance is paid in full.

PAR. 6. 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.

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 ordinarily 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. 7. In truth and in fact, the various statements and representations made by respondent and by his sales agents and representatives, and the acts and practices employed by them in the sale and offering for sale of their pictures in cities, towns, and communities of the various States of the United States, were and are false, deceptive, and misleading in the following, among other, particulars:

1. Associated Arts, Blackstone Academy of Fine Arts, Van Dyke Art Association, and Sterling Art Association are not and never have been art associations or academies in the sense that such terms are known and accepted in the world of art. On the contrary, the business conducted by respondent, through the medium of the above-styled trade names, is and has been no more, in fact, than a business enterprise to sell to the public for profit cheap colored or tinted photographic enlargements and frames therefor. The use by respondent of the term "art association" or "academy of fine arts" has misled and deceived the public as to the character of the business actually conducted by respondent, and has caused the public to confuse respondent's business with various organizations similar in name or designation which are conducting, or which may properly be designated as art associations or academies of fine arts.

2. The so-called "paintings," "hand-painted portraits," "Colura Portraits," or "Polychrome portraits" as sold by respondent are not portraits or paintings in any sense of the word, but on the contrary, are merely cheap, quickly made photographic enlargements costing about \$1.25 each, and tinted or colored by the use of pastel or crayon,

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water color, or other powdered pigments sprayed upon the photographic enlargement in solution, largely through the use of an air brush and compressed air. Said alleged "portraits" or "paintings" are not sold at a "special advertising price" or at a "reduced price," or for a "special producing price" or for the "cost of production." In truth and in fact the price of \$2.95 at which respondent sells the unframed photographic tinted enlargement is not a special or reduced price or the cost of production, but on the contrary, is the regular and customary price which respondent charges for such enlargements.

3. The alleged pictures or "portraits" made by respondent are different from and greatly inferior in quality, workmanship, and character to the samples exhibited by respondent's agents when endeavoring to obtain and in obtaining contracts for such alleged pictures or "portraits."

4. Customers do not understand and have not agreed, in connection with contracts, that treasured family photographs are to be retained by respondent until payment of any sum alleged by respondent to be due him.

5. Respondent does not operate any association of artists and does not give work to unemployed artists or employ any artists, nor has he commercialized the talents of any of America's foremost portrait artists.

6. Respondent conceals and has concealed from purchasers at the time the "portrait" is ordered that the portrait as ordered will be delivered in such a peculiar convexed form, shape, and size that it will be impossible for the customer thereafter to obtain a frame to fit said "portrait" except from the respondent and at prices exacted by respondent therefor.

7. Respondent's selling methods are directed primarily to accomplish the sale of a frame at an exorbitant price, and the respondent's activities in securing contracts for alleged "portraits" or "paintings" and fulfilling the same are merely "bait" or a "come-on" to "hook the sucker" and enable respondent's high pressure frame salesmen to contact the purchaser and sell frames of cheap and inferior quality at prices which are exorbitant and far above the value thereof.

8. Respondent's sales of frames are accomplished by coercive and oppressive acts, practices, and representations, including retention of the original photograph submitted by the customer or the completed "portrait," or both, until an alleged balance due respondent is paid, or until a frame is purchased by the customer who has neither wished for, desired nor ordered same.

9. There is no such organization as the National Portrait Association, or, if such organization actually exists, it is dormant and not actively functioning at the present time or in recent years, and the use by respondent in his order blanks or "certificates" of the name and symbol of such association, and reference thereto by respondent's agents is a representation to the public that respondent's various trade name companies are members of, or sponsored by, a nationally recognized association of portrait painters, when such is not the fact.

10. The use of the word "certificate" for the order blank or form used by respondent in the solicitation of orders is false and deceptive in that it is a representation to the public that it is a thing of value held by him to evidence and certify that he is to receive a valuable "portrait" or "painting" upon payment of a trifling sum of money. In truth and in fact the so-called "certificate" is a binding contract which the customer has been induced unfairly to sign and which contains numerous provisions and representations of a binding nature which are not explained to or understood by the customers.

PAR. 8. The use by the respondent of the aforesaid false and misleading representations and practices in the sale and offering for sale of purported portraits and paintings has had, and now has, the tendency and capacity to and does deceive the purchasing public concerning the quality and value of his products sold as hereinbefore described, and has thereby induced, and is inducing the public to purchase said products under the erroneous belief that the same were and are high-grade quality portraits or paintings, and picture frames of exceptional merit and value. The use by respondent of the aforesaid practices further tends to and does unfairly divert trade to respondent from his competitors, likewise engaged in the sale and distribution of tinted or colored enlargements of photographs in commerce between and among the various States of the United States and in the District of Columbia who truthfully represent their products. As a consequence thereof, substantial injury has been done, and is now being done, by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 9. The aforesaid acts and practices of respondent as herein alleged 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 acts and practices in commerce 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 December 30, 1938, issued, and subsequently served, its complaint in this proceeding upon the respondent, George H. Lewis, an individual, trading as Associated Arts, Blackstone Academy of Fine Arts, Van Dyke Art Association, and Sterling Art Association, 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.

Subsequently, 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 its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, George H. Lewis, is an individual, residing at 909 Union Avenue, North Side, Pittsburgh, Pa. He does business under the trade names, Associated Arts, Box 843, Pittsburgh, Pa., and Associated Arts, 507 Fifth Avenue, New York City, N. Y.; Blackstone Academy of Fine Arts, 234 West Water Street, Syracuse, N. Y.; Van Dyke Art Association, 271 Erie Boulevard, West, Syracuse, N. Y., and Sterling Art Association, Suite 506, The Arcade, Cleveland, Ohio. The various trade names and addresses hereinabove set out are fictitious names and addresses used for mailing purposes only; the addresses 234 West Water Street and 271 Erie Boulevard West, Syracuse, N. Y., being the principal address of the Seails Copying Co., Inc., a corporation engaged in the business of jobbing picture frames, preparing printed enlargements of photographs, and painting photographs with water colors; the address Suite 506, The Arcade, Cleveland, Ohio, being the address of an art studio of one Frank Thompson, and the address 507 Fifth Avenue, New York City, N. Y., being used merely for lending prestige in the obtaining of business. All orders or correspondence received at said addresses are forwarded to respondent personally at his home address or post-office box at Pittsburgh, Pa.

Respondent is the sole owner and operator of the business conducted by him through the medium of the aforementioned trade-name com-

panies, and directs the activities and controls the business policies and practices of each, including the conduct of sales campaigns, character of sales representations made, and all business interviews and correspondence incident thereto.

PAR. 2. Respondent, George H. Lewis, trading variously as Associated Arts, Blackstone Academy of Fine Arts, Van Dyke Art Association, and Sterling Art Association, is now and for more than 1 year last past has been engaged in the business of selling and distributing tinted or colored enlargements of photographs, and frames therefor. Respondent sells his products to customers located in various States of the United States through the medium of salesmen or representatives and causes said tinted or colored enlargements of photographs and frames when so sold by him to be transported from his place of business in Pittsburgh in the State of Pennsylvania to the purchasers thereof located in various other States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his said business, respondent George H. Lewis has been, and is now, engaged in direct and substantial competition with various corporations, partnerships, and individuals likewise engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia, of tinted or colored enlargements of photographs and of frames therefor, and likewise with corporations, partnerships, and individuals engaged in the sale of genuine original paintings, including oil paintings and water-color paintings, in commerce 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 said business, respondent causes agents and representatives employed by him to visit the homes of prospective customers in the cities, towns, and rural communities of the various States of the United States. Said agents or representatives, sometimes called "floaters" or "coxeys," work on a strictly commission basis, living in rooming houses and working from town to town in crews or groups under a crew manager or "verifier," who keeps in constant touch with the daily activities of the respective salesmen, and who is also employed by respondent. Purchasers of pictures are given to understand that they are contracting or dealing with a duly constituted agent of one or the other of respondent's trade name companies, and each agent or salesman is furnished by respondent with an identification card or card of credentials to be presented or exhibited by him when interviewing prospective purchasers. Equipment, including sample cases containing samples of

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"paintings," is also furnished by respondent to his agents and representatives for use in soliciting orders in his behalf.

Respondent causes orders or contracts for pictures or paintings to be taken on printed forms provided by him bearing the name and address of one of the trade name companies under which he is transacting business across the top thereof, and in such order it is variously "certified" that the customer is entitled to a "Hand Painted" or "Polychrome" or "Colura" Convex Portrait, 10 x 16 inches in size, unframed, for the "special producing charge of \$2.95," or "for cost of production, \$2.95," or "for the special advertising price of \$2.95," payment to be made upon presentation of proof at customer's residence. Said order blank or "certificate" is duly signed by respondent's agent in his representative capacity on a line provided therefor. Receipts similar in tenor are signed for the trade name company by the agent making a sale, and the customer is induced to sign a paper promising to pay the sum of \$2.95 when the proof of the portrait is shown to him at his home.

The form of "certificate" used by respondent in his business under the trade name "Van Dyke Art Association," and used with minor variations under his other trade names, and therefore typical of respondent's usual order blank, is as follows:

Van Dyke Art Association (registered)
271 Erie Blvd. West, Syracuse, N. Y.
NPA National Portrait Association
Certificate for a Polychrome Portrait

All other orders \$25.00. This certificate Entitles the Bearer
----- to one, 10 x 16, Octagon, Convexed,
Polychrome Portrait (without frame) for cost of production, \$2.95.

In a few days, the proof of your portrait will be shown at your home and the cost of production must then be paid. Read this contract—this order cannot be countermanded.

An Association that has commercialized the talents of some of America's foremost portrait artists. We only ask that you appreciate this portrait and be kind enough to display it and recommend it at its value and not the amount you expended for it. All photographs returned with the finished work.

I agree to pay the cost of production, \$2.95, when the proof of portrait is shown at my home.

Signed -----
Address -----

PAR. 5. For the purpose of selling the respondent'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 the

respondent, with the knowledge, acquiescence, and active cooperation of the respondent, make false and misleading representations as follows:

Salesmen and other representatives of the respondent, when calling upon prospective purchasers, exhibit several samples of attractively colored specimens of respondent's purported work. The prospective purchaser is told that respondent is offering similar portraits or paintings as a "special advertising price" of \$2.95, or at a "reduced price," or for a "special producing price," or for the "cost of production."

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. Invariably the pictures are represented and referred to by the said salesman as "paintings," "hand-painted portraits," "Colura portraits," or "Polychrome portraits," and are represented as being worth \$25 or some similar amount.

Said salesman then informs the prospective purchaser that the completed "painting" furnished by the respondent will be similar to the sample exhibited, that the respondent is an art association or association of artists skilled in making portraits, paintings, and similar works of art, and is a member of the National Portrait Association. The prospective purchaser is then induced to sign an order or contract in the guise of a "certificate" purporting to entitle the customer to receive a "portrait" or "painting" upon payment only of the cost of production.

Said salesman then induces the customer to loan him a photograph or kodak snapshot of the relative or member of the family whose portrait is to be painted, and represents that such photograph is to be used as a model or guide to the artist who is to paint the portrait, and will be returned to the customer with the completed picture.

The original order taker is followed a few days later by a high pressure salesman also employed by respondent, known as a "proof passer" or "framer." The "proof passer" submits to the customer a black and white print of the original photograph in enlarged form, and collects the \$2.95 called for by the "certificate" and receives instructions from the customers as to shading, coloring, and other details for the painting which is to be produced.

The delivery of the finished picture is made by still another salesman employed by respondent, who presents the picture fully framed in a peculiar octagonal shape and size, and by means of coercion, threats, abuse, and misrepresentations of various kinds endeavors to sell the frame to the customer at varying prices.

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If the purchaser objects to the quality, design, or price of the frame, although previously advised that there is no obligation to buy a frame, he is now, and for the first time, informed that respondent is the only company that furnishes frames of this particular design, and that the original order or "certificate" signed by the customer obligates him to frame the picture in a suitable manner. As a result of such representations, the deliveryman usually succeeds in selling the frame for an exorbitant price, usually \$15 or more.

If the purchaser refuses to purchase a frame, the deliveryman in many instances refuses to deliver the completed picture, which has been previously fully paid for, or the original treasured family photograph borrowed from the customer, until a frame is ordered or a claimed balance is paid in full.

PAR. 6. 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.

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 ordinarily 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. 7. In truth and in fact, the various statements and representations made by respondent and by his sales agents and representatives, and the acts and practices employed by them in the sale and offering for sale of their pictures in cities, towns, and communities of the various States of the United States, were and are false, deceptive, and misleading in the following, among other, particulars:

1. Associated Arts, Blackstone Academy of Fine Arts, Van Dyke Art Association, and Sterling Art Association are not and never have been art associations or academies in the sense that such terms are known and accepted in the world of art. On the contrary, the business conducted by respondent, through the medium of the above-styled trade names, is and has been no more, in fact, than a business enterprise to sell to the public for profit cheap, colored, or tinted

photographic enlargements and frames therefor. The use by respondent of the term "art association" or "academy of fine arts" has misled and deceived the public as to the character of the business actually conducted by respondent, and has caused the public to confuse respondent's business with various organizations similar in name or designation which are conducting, or which may properly be designated as art associations or academies of fine arts.

2. The so-called "paintings," "hand-painted portraits," "Colura portraits," or "Polychrome portraits" as sold by respondent are not portraits or paintings in any sense of the word, but on the contrary, are merely cheap, quickly made photographic enlargements costing about \$1.25 each, and tinted or colored by the use of pastel or crayon, water color, or other powdered pigments sprayed upon the photographic enlargement in solution, largely through the use of an air brush and compressed air. Said alleged "portraits" or "paintings" are not sold at a "special advertising price" or at a "reduced price," or for a "special producing price" or for the "cost of production." In truth and in fact the price of \$2.95 at which respondent sells the unframed photographic tinted enlargement is not a special or reduced price or the cost of production, but on the contrary, is the regular and customary price which respondent charges for such enlargements.

3. The alleged pictures or "portraits" made by respondent are different from and greatly inferior in quality, workmanship, and character to the samples exhibited by respondent's agents when endeavoring to obtain and in obtaining contracts for such alleged pictures or "portraits."

4. Customers do not understand and have not agreed, in connection with contracts, that treasured family photographs are to be retained by respondent until payment of any sum alleged by respondent to be due him.

5. Respondent does not operate any association of artists and does not give work to unemployed artists or employ any artists, nor has he commercialized the talents of any of America's foremost portrait artists.

6. Respondent conceals and has concealed from purchasers at the time the "portrait" is ordered that the portrait as ordered will be delivered in such a peculiar convexed form, shape, and size that it will be impossible for the customer thereafter to obtain a frame to fit said "portrait" except from the respondent and at prices exacted by respondent therefor.

7. Respondent's selling methods are directed primarily to accomplish the sale of a frame at an exorbitant price, and the respondent's

activities in securing contracts for alleged "portraits" or "paintings" and fulfilling the same are merely "bait" or a "come-on" to "hook the sucker" and enable respondent's high-pressure frame salesmen to contact the purchaser and sell frames of cheap and inferior quality at prices which are exorbitant and far above the value thereof.

8. Respondent's sales of frames are accomplished by coercive and oppressive acts, practices, and representations, including retention of the original photograph submitted by the customer or the completed "portrait," or both, until an alleged balance due respondent is paid, or until a frame is purchased by the customer who has neither wished for, desired, nor ordered same.

9. There is no such organization as the National Portrait Association, or, if such organization actually exists, it is dormant and not actively functioning at the present time or in recent years, and the use by respondent in his order blanks or "certificates" of the name and symbol of such association, and reference thereto by respondent's agents is a representation to the public that respondent's various trade-name companies are members of, or sponsored by, a nationally recognized association of portrait painters, when such is not the fact.

10. The use of the word "certificate" for the order blank or form used by respondent in the solicitation of orders is false and deceptive in that it is a representation to the public that it is a thing of value held by him to evidence and certify that he is to receive a valuable "portrait" or "painting" upon payment of a trifling sum of money. In truth and in fact the so-called "certificate" is a binding contract which the customer has been induced unfairly to sign and which contains numerous provisions and representations of a binding nature which are not explained to or understood by the customers.

PAR. 8. The use by the respondent of the aforesaid false and misleading representations and practices in the sale and offering for sale of purported portraits and paintings has had, and now has, the tendency and capacity to and does deceive the purchasing public concerning the quality and value of his products sold as hereinbefore described, and has thereby induced, and is inducing the public to purchase said products under the erroneous belief that the same were and are high-grade quality portraits or paintings, and picture frames of exceptional merit and value. The use by respondent of the aforesaid practices further tends to and does unfairly divert trade to respondent from his competitors, likewise engaged in the sale and distribution of tinted or colored enlargements of photographs in commerce between and among the various States of the

United States and in the District of Columbia who truthfully represent their products. As a consequence thereof, substantial injury has been done, and is now being done, by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent have been, and are, all to the prejudice and injury of the public and said 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 allegations 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 George H. Lewis, an individual trading under the name and style of Associated Arts, Blackstone Academy of Fine Arts, Van Dyke Art Association, and Sterling Art Association, or trading under any other name, his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce as commerce is defined in the Federal Trade Commission Act, 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 portraits or paintings, or are "hand-painted portraits," "colura portraits," or "polychrome portraits."

2. Using the terms "painting" or "portrait," either alone or in conjunction with the words "hand-painted," "colura," "polychrome," or any other terms or words in any way to designate, describe, or refer to colored or tinted pictures, photographs, or photographic enlarge-

ments, or other pictures produced from a photographic base or impression.

3. Misrepresenting that any specified sum is the actual cost of materials in a picture, or the "cost of production," or a "special advertising price," or a "reduced price," or a "special producing price," or otherwise misrepresenting the actual cost of either materials or production, or both.

4. Representing, by the use of the word "certificate" or any other word or words, that the order blank or form used by him in the solicitation of orders is anything other than a contract form for the purchase of a picture or pictures.

5. 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.

6. Representing 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.

7. 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 only from the respondent, and generally at prices equal to, or in excess of, the prices already charged for pictures.

8. 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.

9. Representing, by the use of the trade names Blackstone Academy of Fine Arts, Van Dyke Art Association, Sterling Art Association, or any other fictitious trade name of similar import, that respondent is an artist or conducts an art association or academy, or is connected with an association or academy of artists or similar groups or organizations.

10. Representing, by the use of the name and symbol of the National Portrait Association or other nonexistent or dormant association or organization, that respondent is a member of, or sponsored by, a nationally recognized association of portrait painters, when such is not the fact.

11. Representing that respondent gives work to unemployed artists or employs artists or that he has commercialized the talents of any of America's foremost portrait artists, when such is not the fact.

12. Using any coercive or oppressive acts, practices, or representations in the sale of pictures or the frames therefor, including retention of the original photograph submitted by the customer or the completed picture or Both, until a frame is purchased from him.

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
EDUCATORS ASSOCIATION, 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 3139. Complaint, May 29, 1937—Decision, Mar. 9, 1939

Where a corporation engaged in publication of reference book designated as "The Volume Library," and in sale of entire output thereof to its president, and owner of 95 percent of its stock; said president, vice president, and second vice president; and various individuals engaged also, under trade name similar to that of said corporation, in sale of said reference book to ultimate consumers through agents or canvassers under contracts entered into with aforesaid corporate president, and required, in conduct of their said business, to make use of such name, registered with proper department of State in which representative was conducting such business, in course of which, in aggregate, millions of parents of school children had been solicited to buy said books at prices ranging from \$10 to \$17 a copy, and from one to two million copies had been thus sold; in variously soliciting sale of and selling said book as above indicated, in competition with others likewise engaged in selling and marketing reference books in commerce among the several States—

- (a) Represented, through use of term "Educators Association" in the respective corporate and trade names employed in conduct of such business and displayed on corporate seal set forth on so-called certificate of membership furnished each purchaser and giving him privilege of consulting its so-called Bureau of Research and Service, and on the guarantee thus furnished, that they constituted a group of educators or teachers formed into an association;

Facts being neither said corporation nor similarly named purported association constituted an official organization or association of altruistic educators, but solely a business enterprise organized and existing for profits derived from the sale of said "Volume Library";

With result of misleading substantial portion of prospective purchasers into erroneous and false belief that such corporate and trade names meant that said corporation and association were organizations operated by a group of teachers or educators properly so-called, united for a common purpose other than financial gain, and with capacity and tendency to induce members of public, under such false and erroneous belief, to make purchases of said volume which they would not make except for such false and erroneous belief;

- (b) Represented or implied to prospective purchasers, in some instances, that they came directly from the school which was attended by the child of the particular prospect, through their canvassers, who thus gained admission to such homes and who also, in accordance with their instruction, made sales talks so worded as to mislead prospective purchaser into erroneous and false belief that the canvasser was in some manner connected with school work, and that book itself was a necessary requirement of the school attended by the particular child;