

Syllabus

IN THE MATTER OF

CONSOLIDATED PORTRAIT & FRAME COMPANY, AND
BEN DIAL TRADING AS DE LUXE ART STUDIO, AND
DANIEL F. ORANGE AND CHARLES C. ORANGE

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

Docket 2548. Complaint, Sept. 11, 1935—Decision, Mar. 11, 1939

Where corporation and certain officers and certain agent or employee thereof, as variously engaged in sale and distribution of pictures and frames, namely—

I. Corporation engaged in sale of such products through groups or crews of salesmen who (1) canvassed from house to house throughout the various States to procure orders therefor, and whom it (2) supplied with standard selling and operating supplies for their use as aforesaid, and including sample selling kits, order blanks, and envelopes, and selling paraphernalia such as "lucky envelopes," used to create impression in prospect's mind that, by reason of pretended lucky "draw" or other lure, he was to be recipient of special price advantage or free picture, and (3) with catalogs containing descriptions and prices of its merchandise and also instructions and method of approach to be employed by them in contacting prospective purchasers, and representations to be made by them in offering pictures and frames, and who (4) obtained and forwarded, with said orders, snapshot or other picture of customer or member of customer's family, as a rule, together with instructions pertaining to manner in which customer desired picture made;

II. The president and vice president of said corporation, who operated, controlled, and directed its corporate affairs and activities and managed, from the corporate address, the transaction of all the office business incident to offer and sale of their pictures as herein set forth, including keeping of files, correspondence with customers and others, and collection of delinquent accounts, including action in said respect under names of fictitious finance companies made use of by them in such connection; and

III. An individual who was engaged in sale of pictures made by said corporation and of frames purchased by it from manufacturers thereof, and who, in carrying on, under trade name "De Luxe Art Studio," such business, along with others similarly engaged and employed by it, through supervision of one of said groups or crews;

In soliciting and selling such pictures and frames, in substantial competition with others engaged in manufacture, sale, and distribution of such products and who do not sell the same through using "lucky envelopes" or misrepresenting terms and conditions of sale thereof, but truthfully represent value and quality of their products and terms and conditions of sale thereof—

(a) Represented to customers and prospective customers that the pictures which were made by said corporation were "paintings" or "finely finished paintings," through making use of latter characterization thereof in the

order blanks supplied such salesmen, and through describing and referring to same as "paintings" in the sales catalogs with which it supplied such salesmen;

Facts being pictures involved were neither paintings nor finely finished paintings, but enlarged colored photographs made through enlargement of small snapshots and other similar pictures and coloring thereof through application thereto of paint in color; and

- (b) Induced prospective purchasers solicited by their said salesmen and canvassers as aforesaid, to believe that, as a result of a lucky drawing they would or might procure two pictures of the value of \$40 each at a reduced price of \$20, as a result of their supposed good luck and the display of the pictures in a conspicuous place as a means, purportedly, of advertising the same to people living in the respective communities, and thus enabling the salesmen to sell such pictures to neighbors of the customer at the represented usual price of \$40, through manipulation by salesman of envelopes from which prospective customer was induced to draw, so that prospective customer invariably drew the "lucky envelope" containing so-called "Merchandise Discount Check" setting forth that if person whose name appeared thereon agreed "to assist us in advertising, we will accept this credit check as a \$20 payment on a \$40 painting and will deliver to such person one additional \$40 painting without additional cost"; and in a number of instances induced customers to participate in such drawings by representing that mere participation in such drawings, with no obligation on customer's part, would secure free premium;

Facts being such alleged drawing was a fraudulent scheme conceived for sole purpose of inducing prospective purchasers to believe that if they drew a "lucky envelope" they would procure, as above, two pictures of a value of \$40 each at a reduced price of \$20, pictures or so-called "paintings" sold by it had a value substantially less than such represented value, and customer, after participating in such draw, was informed that free "painting" would not be delivered until he had purchased "paintings" upon which he was entitled to credit for drawing, as above set forth, and they were not conducting advertising campaigns in communities where pictures were being sold, and their said pictures were sold to all customers at uniform prices;

With result that customers were deceived into belief that they had been lucky and won distinct advantage over other customers in same locality by entering into contracts for purchase of said pictures; and

Where said individual engaged, as above set forth, in sale of said corporation's pictures and frames under trade name employed by him, in common with others similarly supervising and working through groups or crews of salesmen, and his said salesmen, engaged as aforesaid—

- (c) Represented to prospective purchasers, whom they solicited to sign contracts, that orders signed by them were merely receipts for the small photographs furnished by such customers from which enlargements were to be made, and sometimes represented such orders as either memorandum as to time of delivery or that customer was entitled to free picture;

Facts being papers signed by customers as aforesaid were binding contracts to purchase pictures or "paintings," signed first by salesmen, described therein as "advertising salesmen," containing memorandum of credit for drawing "lucky envelope," provision for free "painting," and other provi-

1019

Complaint

sions and representations of binding nature on customer, not explained to him by salesman, and including provisions to effect that contract could not be countermanded and that verbal agreements were not recognized;

- (d) Represented to prospective customers that frames sold and offered were "gold leaf" frames, and that said "gold leaf" was of high quality and of high value, and represented actual and usual value of such frames as much higher than they in fact were, and glass in many of said frames as being imported Belgium glass;

Facts being the finish thereon was not "gold leaf," such frames were not "gold leaf" as term "gold leaf" is used and accepted in trade, but were finished with burnished bronze material of inferior value, usual and actual value thereof was substantially lower than that represented by said individual and salesmen, and glass was not imported Belgium, nor unique in quality or of high value; and

- (e) Adopted and used, as aforesaid, in soliciting sale of and selling frames and pictures, trade name "De Luxe Art Studio," and made use thereof in soliciting orders from customers, and featured said name and added phrase "Artists and Creators of the Original DeLuxe Paintings";

Facts being said individual did not maintain an independent studio in which artists are employed to paint or produce said portraits, enlarged and tinted, as aforesaid by such corporation, and said trade name was adopted by said corporation and said corporation's officers and individuals in order to conceal fact that such corporation was manufacturer and distributor of the pictures, and to mislead and deceive public into belief that said individual maintained a studio of his own in which he made his own pictures;

With effect of misleading substantial portion of purchasing public into erroneous and mistaken belief that all said false and misleading statements and representations were true, and with result that public, acting under mistaken and erroneous belief induced by such false and misleading statements and representations, purchased substantial volume of their pictures and frames, and trade was unfairly diverted to them from their competitors who truthfully represent their products:

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

Before *Mr. John L. Hornor* and *Mr. Robert S. Hall*, trial examiners.

Mr. George Foulkes for the Commission.

Nash & Donnelly, of Chicago, Ill., for Consolidated Portrait & Frame Co., Daniel F. Orange and Charles C. Orange.

Mr. John Lewis Smith and *Mr. James O'Connor Roberts*, of Washington, D. C., for Ben Dial.

COMPLAINT

Pursuant to the provisions of an Act of Congress 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 Consolidated Portrait & Frame Co., a

Complaint

28 F. T. C.

corporation, and Ben Dial, trading as DeLuxe Art Studio, and Daniel F. Orange and Charles C. Orange, individuals, hereinafter referred to as respondents, have been and now are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, states its charges in that respect as follows:

PARAGRAPH 1. The respondent, Consolidated Portrait & Frame Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal places of business and office at 100 South Jefferson Street in the city of Chicago, State of Illinois. Respondent is now and has been for several years last past engaged in offering for sale and selling frames and tinted enlargements of photographs. In the course and conduct of its business the respondent sells its products through salesmen or representatives appointed by it as agents in its behalf, to customers, some located in the State of Illinois and others in other States of the United States. Pursuant to such sales, shipments are made by respondents from its place of business in Illinois to such customers in States other than the State of Illinois.

The respondent, Ben Dial, trading as DeLuxe Art Studio, is and at all times hereinafter mentioned has been an individual trading under the name of DeLuxe Art Studio with his principal place of business and office at 100 South Jefferson Street in the city of Chicago, State of Illinois. Respondent is engaged in the business of selling frames and tinted enlargements of photographs. The sales are made through salesmen or representatives appointed by said respondent as agents in his behalf, to the general public throughout the United States, and pursuant to said sales, shipments are made by said respondent from his place of business in Chicago to purchasers, some located in the State of Illinois and others located in States of the United States other than the State of Illinois.

The respondents, Daniel F. Orange and Charles C. Orange, are, respectively, president and vice president of the Consolidated Portrait & Frame Co., with their principal place of business and office at 100 South Jefferson Street in the city of Chicago, State of Illinois. Both in his individual capacity and as an officer of the Consolidated Portrait & Frame Co., the respondent, Daniel F. Orange, acts as the agent of the respondent, Ben Dial, trading as the DeLuxe Art Studio, at the above-stated address, or as an agent of the Consolidated Portrait & Frame Co. Both in his individual capacity and as an officer of the Consolidated Portrait & Frame Co., the respondent, Charles C. Orange, is and has been actively engaged as

1019

Complaint

agent and manager of the Great Eastern Finance Co., Not Inc., a fictitious name used by the respondent, Ben Dial, for the purpose of impressing debtors in the collection of delinquent accounts. The present address of the Great Eastern Finance Co., Not Inc., is 100 South Jefferson Street, Chicago, Ill.

In the course and conduct of their aforesaid respective businesses, the respondents are in substantial competition with other corporations, partnerships, firms, and persons who are engaged in the sale of frames and tinted enlargements of photographs between and among the various States of the United States.

PAR. 2. In offering for sale and selling frames and tinted enlargements of photographs the respondents named in paragraph 1 hereof employ salesmen or agents to canvass from house to house in various cities located in the several States of the United States, for the purpose of contacting purchasers of the said products. Respondent, Ben Dial, trading as DeLuxe Art Studio, has direct charge and supervision over the aforesaid agents or salesmen. When orders are obtained from customers by said agents or salesmen, they are forwarded to a supervisor who in turn forwards the order for portraits and frames, if frames are ordered, to the respondent, Consolidated Portrait & Frame Co., or to the respondent, Ben Dial, trading as DeLuxe Art Studio. The respondent, Consolidated Portrait & Frame Co., or the respondents, Daniel F. Orange and Charles C. Orange, individually or as agents of respondent, Ben Dial, trading as DeLuxe Art Studio, thereupon open the correspondence containing the orders addressed as aforesaid, manufacture the portraits so ordered and mail them to the supervisor or the agents or salesmen who procured said orders.

The respondent, Ben Dial, trading as DeLuxe Art Studio, the Consolidated Portrait & Frame Co., the respondents, Daniel F. Orange and Charles C. Orange, individually, the Great Eastern Finance Co., Not Inc., and the Moorg Collection Agency, Not Inc., occupy the same offices at 100 South Jefferson Street, Chicago, Ill. The files and records and the books of account of the respondent, Ben Dial, are maintained in the said offices. Respondent, Daniel F. Orange, has charge of the books of account and records of respondent, Ben Dial, supervises and maintains the same, and answers all complaints of customers, and makes all adjustments with customers, in connection with the sale of frames and tinted enlargements and photographs sold by the respondent, Ben Dial, his agents, or salesmen, and the respondents, their agents, or salesmen.

In the course and conduct of his business, the respondent, Ben Dial, and all of the aforesaid respondents, employ the term, "Great East-

Complaint

28 F. T. C.

ern Finance Co., Not Inc.," a fictitious name, for the purpose of collecting delinquent accounts. When a customer orders a tinted enlargement of a photograph termed by the respondents' agents as a "painting" and fails to pay for the same upon delivery, a form letter is sent to the customers upon the stationery of the Great Eastern Finance Co., Not Inc., by the respondent, Charles C. Orange. When a series of the form letters fail to effect a payment in full from the said delinquent customer, a letter is sent out from the Moorg Collection Agency, Not Inc., also located in the offices at 100 South Jefferson Street, Chicago, Ill. These letters are signed by Charles C. Orange. The Moorg Collection Agency is likewise a fictitious name possessing no assets, no bank account, and is solely a device used by the respondent, Ben Dial, and all the aforesaid respondents, for inducing by fear an immediate payment.

PAR. 3. In the course and conduct of their business, as aforesaid, in the manufacture, soliciting the sale of, and selling of frames and tinted enlargements of photographs as described in paragraphs 1 and 2 hereof, the respective respondents, through salesmen or representatives appointed by them as agents in their behalf, and as an inducement to prospective customers to purchase their portraits or "paintings," represent the actual value of said portraits or "paintings" to be much greater than they in fact are, and represent the usual prices to be far in excess of the prices at which said portraits actually sell, and then offer the said prospective customers pretended special prices which are usually much less than the represented actual value and usual prices of said portraits or "paintings." Such pretended special prices for such portraits or "paintings" are made upon the claimed consideration that such prospective customers will recommend the portraits and advertise the businesses of respondents in the respective communities in which they live, and by inducing prospective customers to participate in a drawing for a so-called "lucky envelope" from a number of envelopes carried by agents of the respondents for that purpose, the greater number of which envelopes contain copies which purport to entitle those drawing the same to discounts from the represented usual prices of portraits or "paintings" sold by respondents, and such drawings are so manipulated by agents of respondents that each prospective customer receives one of the said "lucky envelopes." The agents and salesmen of the respondents represent to prospective customers, in order to induce such customers to participate in the drawing of a "lucky envelope," that upon such drawing the customer will receive a free portrait or "painting," when in truth and in fact the prices represented by the respondents to be the actual and usual

values of their portraits or "paintings" do not indicate the true value nor actual value nor usual value of said portraits. The prices represented by the respondents to be the usual prices of their portraits or "paintings" are fictitious and misleading and are calculated to, and actually do mislead and deceive purchasers as to the values of said portraits or "paintings" and their usual selling prices, and mislead and deceive them into the belief that they are obtaining said portraits at prices substantially below their usual selling prices, and below their true values or worth when they buy at the pretended special prices offered by respondents. The offer of the alleged free picture to the customer by the respondents is in truth and in fact a misrepresentation, in that the customer is advised after and not before the drawing that he will not be entitled to the alleged free picture until the customer has purchased the portrait or "painting" upon which he is entitled to a credit for drawing a so-called "lucky envelope." In truth and in fact, the price paid by the customer for the portrait or "painting" he contracts to buy also includes the cost of the portrait or "painting" he is told he is to receive free of charge.

PAR. 4. The respondents further, in the course of their said businesses, fraudulently induce persons to whom they furnish tinted enlargements of photographs to sign a contract to purchase said reproductions upon the false representation that said contract is merely a receipt for the small photographs from which enlargements are to be "painted," obtained from the customers or a memorandum as to the time of delivery of the said portrait or "painting" or a memorandum that the customer is entitled to a free picture or "painting" or a memorandum. In truth and in fact the document or paper signed by the customer, as aforesaid, is a binding contract to purchase such reproductions containing memorandum of credit for the drawing of a "lucky envelope" and a provision for a free picture and like other provisions, which instrument is first signed by the agent for respondents, who is falsely described in such contract as "advertising salesman," and which contract contains numerous provisions and representations of a binding nature on the customers which are not explained to or understood by said customers, among which are provisions to the effect that such contract cannot be countermanded, and that verbal agreements are not recognized.

PAR. 5. The aforesaid respondents further, in the conduct of their said businesses, cause their agents to call upon prospective customers and to represent to said customers that the finished enlargement offered for sale is an oil painting, or a painting, when in truth and in fact the said tinted enlargement of a photograph is not an oil painting,

Complaint

28 F. T. C.

or a painting, but is an enlarged photograph tinted with oil by a method known in the trade as the "air brush method." The term "oil painting" is a well-established term and recognized as such among artists and the general public to designate and denominate an object created on a blank surface by the use of oil and by free hand. A tinted or colored enlargement of a photograph is not a "painting" as that term is used and accepted by members of the industry and the general public. The use by the said respondents of the words "painting" and "oil painting" has had and still has the tendency and capacity to deceive, and has deceived and still deceives customers and prospective customers into the belief that the portraits which they will receive will be and are oil paintings, and to purchase said portraits from said respondents in such erroneous belief.

PAR. 6. The aforesaid respondents, further, in the conduct of their said businesses, cause their said agents to call upon prospective customers and to represent to said customers that the frames which the respondents sell are "gold leaf" frames, and that the said "gold leaf" is of high quality and of high value, and represent the actual and usual value of said frames to be much higher than they in fact are, and represent that the glass in said frames is imported Belgium glass, whereas in truth and in fact the said finish on the said frames designated by the respondents as "gold leaf" is not a finish of high value, nor is the said glass imported from Belgium, but on the contrary the prices represented by the respondents to be the actual values and the usual values of said frames do not indicate such values and in truth and in fact said glass is manufactured in the United States. That the frames represented by the respondents to be "gold leaf" frames are not in fact frames finished with "gold leaf" nor are they "gold leaf" frames as the term "gold leaf" is used and accepted in the trade, but are frames finished with burnished bronze. The use by the said respondents, as aforesaid, of the words "gold leaf" and the representation of quality and value, and that the glass is imported, made by the respondents concerning such frames, have had and still have the tendency and capacity to deceive, have deceived and still deceive customers and prospective customers into the belief that the said frames which they are to receive will be finished in "gold leaf" and will be "gold leaf" frames of high value, and that the glass is unique and of high value, and to purchase the said frames in such erroneous belief.

PAR. 7. In the course and conduct of their businesses as aforesaid, the respondents, or more specifically, the respondent Ben Dial trading as DeLuxe Art Studio, in soliciting the sale of and selling frames

1019

Complaint

and tinted enlargements of photographs, as described in paragraph 1 hereof, have adopted in years last past and used and still adopt and use as and for a trade name the words "DeLuxe Art Studio" under which to carry on business. Salesmen in the employ of the respondents use said designated trade name in soliciting orders from customers. Letterheads feature the said trade name and the added phrase "Artists and Creators of the Original DeLuxe Paintings." Envelopes, invoices, credit slips, receipts, statements, and other printed material used by said respondents feature the trade name, DeLuxe Art Studio. The term, "Art Studio," is a standard and accepted term and recognized as such among the trade and the general public to designate and denominate a studio or workshop in which an artist applies his art. In truth and in fact the said respondents or the respondent, Ben Dial, trading as DeLuxe Art Studio, does not maintain an independent studio termed the DeLuxe Art Studio in which artists are employed to paint or produce the said portraits, but the said portraits are enlarged and tinted by the respondent, The Consolidated Portrait & Frame Co. The use of such term as aforesaid by the respondents or the respondent, Ben Dial, trading as DeLuxe Art Studio, is calculated to deceive and mislead, and does deceive and mislead customers and prospective customers into the belief that the said respondents trading as the DeLuxe Art Studio maintain a studio called the DeLuxe Art Studio in which they employ artists who paint or produce the paintings or portraits ordered by said customers, and to purchase the said paintings or portraits in such erroneous belief.

PAR. 8. There are among the competitors of the respondents, described in paragraph 1 hereof, corporations, partnerships, firms, and persons who are engaged in the sale of frames and tinted enlargements of photographs who do not employ and maintain the practices as set forth in paragraphs 3 to 7 of this complaint, but who truthfully represent their products and honestly vend the same, and there are also among the competitors of the respondent corporations, partnerships, firms, and persons engaged in the business of painting portraits who truthfully represent their products as being paintings.

PAR. 9. The use by the respondents of the said practices as set forth in paragraphs 2 to 7 of this complaint unfairly diverts trade from their competitors and thereby substantial injury has been done and is being done by respondents to substantial competition in interstate commerce.

PAR. 10. The acts and practices set forth in paragraphs 2, 3, 4, 5, 6, 7, and 8 hereof are all to the prejudice of the public and the re-

spondents' 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 September 11, 1935, issued and served its complaint in this proceeding upon respondents, Consolidated Portrait & Frame Co., a corporation, and Ben Dial, trading as DeLuxe Art Studio, and Daniel F. Orange and Charles C. Orange, individuals, 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' answers thereto, testimony and other evidence in support of the allegations of said complaint were introduced by George Foulkes, attorney for the Commission, and in opposition to the allegations of the complaint by James O'Connor Roberts and Frederic L. Goff, attorneys for respondents, before John L. Hornor and Robert S. Hall, examiners 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 regularly 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; 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 Consolidated Portrait & Frame Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business located at 100 South Jefferson Street in the city of Chicago, State of Illinois. Said respondent is now, and for several years last past has been, engaged in the business of selling pictures and frames.

Respondents Daniel F. Orange and Charles C. Orange, are, respectively president and vice president of respondent Consolidated Portrait & Frame Co., and as such operate, control, and direct its corporate affairs and activities.

Respondent Ben Dial is an individual engaged in the business of selling pictures manufactured by respondent Consolidated Portrait & Frame Co. Respondent Ben Dial also sells frames for said company which the company purchases from manufacturers of picture frames. Respondent Ben Dial's office is also located at 100 South Jefferson Street, Chicago, Ill.

The office business of all the respondents named herein, such as the keeping of files, correspondence with customers and others, and the collecting of delinquent accounts, is handled by respondents Daniel F. Orange and Charles C. Orange at this address.

Respondents cause said pictures and frames, when sold, to be transported from their place of business in the State of Illinois to purchasers thereof located at various points in States of the United States other than the State from which such shipments are made.

Respondents are now and have been in substantial competition with other corporations, partnerships, firms, and individuals likewise engaged in the business of selling and distributing pictures and frames in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business, respondent Consolidated Portrait & Frame Co. sells its products through salesmen who canvass from house to house throughout the various States of the United States for the purpose of procuring orders for respondent's pictures and frames.

In order to sell its pictures and frames, respondent Consolidated Portrait & Frame Co. makes use of the services of certain salesmen who organize and supervise groups or what are known in the trade as "crews" of salesmen. These individual salesmen who organize and supervise groups or "crews" of salesmen maintain their offices at the place of business of respondent Consolidated Portrait & Frame Co. at 100 South Jefferson Street, Chicago, Ill. Said individual salesmen usually accompany their groups or "crews" of salesmen and assist them in their selling efforts as they go from place to place obtaining orders for pictures and frames.

Each salesman is furnished by respondent Consolidated Portrait & Frame Co. with standard selling and operating supplies for use by them in soliciting orders for pictures and frames. These supplies consist of sample selling kits, order blanks, order envelopes, and various other selling paraphernalia such as "lucky envelopes."

Respondent Ben Dial, in selling the products of respondent Consolidated Portrait & Frame Co., had under his supervision one of the said groups or "crews" of salesmen, and during the time

Findings

28 F. T. C.

herein mentioned sold a substantial number of pictures and frames throughout the various States of the United States. Respondent Ben Dial, in soliciting orders for pictures and frames and in the conduct of his selling activities, used the trade name DeLuxe Art Studio.

Respondent Ben Dial, together with other salesmen who likewise operated groups or "crews" of salesmen engaged in selling the products of respondent Consolidated Portrait & Frame Co., made use of such a trade name, and on all order blanks and business stationery designated the office address of the DeLuxe Art Studio as 100 South Jefferson Street, Chicago, Ill.

In soliciting the services of salesmen, respondent Consolidated Portrait & Frame Co. causes to be printed and issued to persons interested in selling its products various types of catalogs which set forth descriptions and prices of its merchandise. On the cover pages of said catalogs the following labels appear in large print:

The Company That Helps Agents
Consolidated Portrait and Frame Company,
The Company That Helps Agents

In said catalogs, respondent Consolidated Portrait & Frame Co. sets forth the selling technique to be employed by salesmen in offering for sale and selling its products to customers. In this way salesmen are instructed by respondent Consolidated Portrait & Frame Co. in the method of approach to be employed by them in contacting prospective purchasers and in the representations to be made by them in offering pictures and frames for sale.

Orders for the pictures and frames are solicited from customers and prospective customers in the following manner:

Respondent Ben Dial and salesmen obtain from each customer a small snapshot picture or other picture, which is usually a picture of the customer or of a member of the customer's family, and forward the same to respondent Consolidated Portrait & Frame Co., together with an order signed by the customer and a small envelope upon which are written by the salesmen the instructions of the customer pertaining to the manner in which the customer desires the picture to be made.

Thereupon a picture is made by respondent Consolidated Portrait & Frame Co. from the small snapshot or other picture in accordance with the instructions set forth on the order envelope, and the same is then forwarded by respondent Consolidated Portrait & Frame Co. to respondent Ben Dial and salesmen for delivery to

the customer. In a number of instances, respondent Consolidated Portrait & Frame Co. shipped the picture directly to the customer.

Payment for the pictures and frames is made by said customers to salesmen either in cash or part cash. If the customer at the time of signing an order for pictures or frames pays only a part of the purchase price of said merchandise, he signs a promissory note for the unpaid balance. The promissory note used by respondent Consolidated Portrait & Frame Co. and respondent Ben Dial and salesman is a form of negotiable note which bears the name of the Great Eastern Finance Co., Not Inc., as payee. The Great Eastern Finance Co., Not Inc., is a trade name used by respondents with its address also designated as 100 South Jefferson Street, Chicago, Ill. Said finance company possesses no bank account or other assets and is merely a trade name used by respondents for the purpose of collecting delinquent accounts.

If said promissory note is not paid upon maturity by the customer, respondents send a form letter to said customer upon the stationery of the Great Eastern Finance Co., Not Inc., demanding payment of the same. If the promissory note still remains unpaid, further notices are sent by respondents to said customer upon the stationery and letterhead of the Moorg Collection Agency, Not Inc., which notices also demand payment. The Moorg Collection Agency, Not Inc., is also a trade name used by respondents for the purpose of collecting delinquent accounts.

All of the correspondence by respondent Consolidated Portrait & Frame Co., respondent Ben Dial, DeLuxe Art Studio, Great Eastern Finance Co., Not Inc., and Moorg Collection Agency, Not Inc., is handled by respondent Consolidated Portrait & Frame Co. in its office at 100 South Jefferson Street, Chicago, Ill. Respondents Daniel F. Orange and Charles C. Orange answer all letters addressed to all of the above-named firms or individuals on the letterheads of said firms or individuals.

PAR. 3. In the course and conduct of their business, respondents represented to customers and prospective customers that the pictures which are manufactured by respondent Consolidated Portrait & Frame Co. are "paintings" or "finely finished portraits."

These representations are made in various ways. On the order blanks with which the salesmen were supplied by respondents, as hereinabove set forth, and which were signed by customers when ordering one of respondents' pictures, a picture is described as a "painting" or "finely finished painting." Said order blanks read as follows:

Findings

28 F. T. C.

You will please make for the undersigned from the photograph -----
delivered to your advertising salesman this day ----- finely finished painting
----- (how many)
----- and deliver the same to me on or about the ----- day of -----
----- 193--- The price of the painting ----- is \$-----.

In various statements made in the sales catalogs used by respondent Consolidated Portrait & Frame Co. for the purpose above set forth said pictures are described as "paintings." The following are examples of such statements but are not all inclusive:

To begin with, you want to arouse a desire on the part of the prospect for one of these paintings.

In nine cases out of ten, the paintings, themselves, in your sample case, will create this desire.

In truth and in fact, respondents' products are not paintings and are not finely finished paintings but are enlarged photographs colored.

Respondents' products are made by enlarging small snapshot pictures and other similar pictures and coloring the enlargements.

Paint and coloring are applied to the enlarged photographic outline.

The testimony shows and the Commission finds that a painting, as understood by photographers who color photographs, and by artists who paint pictures, is an original representation by a painter or artist of a design, image, or object on a surface by means of paint, either pastel, water color, or oil; a freehand image painted directly on the surface without the intervention of any mechanical means such as a camera.

PAR. 4. Further, in offering for sale and in selling their pictures, respondents use the so-called "lucky envelope device." Salesmen who canvass from house to house soliciting orders are supplied by respondents with a number of small envelopes, the greater number of which contain a so-called "Merchandise Discount Check" which purports to entitle the person who "draws" one to two "paintings" having a usual selling price of \$40 each at the special price of \$20. Said Merchandise Discount Check has the following statements thereon:

Special Check—If the person whose name appears on this check agrees to assist us in advertising, we will accept this credit check as a Twenty Dollar payment on a \$40 painting and will deliver to such person one additional \$40 painting without additional cost.

Prospective customers are induced to "draw" an envelope from a number of envelopes in order to obtain the lucky envelope containing the so-called Merchandise Discount Check. The envelopes from which the customers are induced to "draw" are manipulated by the salesman in such a manner that each prospective customer draws a lucky envelope containing the so-called Merchandise Discount Check.

In a number of instances salesmen induced customers to participate in a drawing for a lucky envelope by representing to them that upon merely participating in the "draw," with no obligation on the customer's part, the customer would secure a free "painting." After the customer participated in the "draw," he would be informed by the salesman that the "painting" he would get free would not be delivered until the customer purchased the paintings upon which he was entitled to a credit for drawing the so-called lucky envelope containing the Merchandise Discount Check.

The Commission finds that the pictures or "paintings" sold by respondents have a value substantially less than the represented value of \$40. The Commission further finds that the respondent Consolidated Portrait & Frame Co. enabled respondent Ben Dial and the salesmen working under his supervision to mislead and deceive purchasers by supplying them with the aforesaid sales device. The Commission finds that the alleged "drawing" is a fraudulent scheme conceived for the sole purpose and with the result of inducing prospective purchasers to believe that if they draw a lucky envelope they will procure two pictures of the value of \$40 each at a reduced price of \$20. In fact, however, every prospective purchaser 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.

PAR. 5. Customers were also led to believe by statements of respondents' salesmen and statements printed on the so-called Merchandise Discount Checks that if they displayed the pictures in a conspicuous place and thereby advertised said pictures to people living in their communities, the salesmen would thereby be able to sell said pictures to neighbors of said customers at the represented usual price of \$40. The Commission finds that respondents and their salesmen did not conduct and were not conducting advertising campaigns in the communities where the pictures were sold, and that respondents' pictures were sold to all customers at a uniform price. As a result of the representations made by salesmen in connection with the "drawing," customers were deceived into believing that they had been lucky and had won a distinct advantage over other customers in the same locality by entering into contracts for the purchase of respondents' pictures.

PAR. 6. Respondent Ben Dial and salesmen induced persons from whom they solicited orders for pictures to sign contracts to purchase said pictures by representing to such persons that orders signed by them were merely receipts for the small photographs furnished by

Findings

28 F. T. C.

such persons from which enlargements were to be made. Ofttimes said salesmen, instead of representing said order blanks as "receipts," represented the same to be either a memorandum as to the time of delivery of said picture, or a memorandum that the customer was entitled to a free picture.

In truth and in fact, the papers signed by the aforesaid customers were binding contracts to purchase pictures or "paintings." All such contracts contained a memorandum of credit for drawing a "lucky envelope" and a provision for a free "painting" and other provisions. Said orders were first signed by the salesman, who is described in such contract as an "advertising salesman." The order blanks also contained numerous other provisions and representations of a binding nature on the customer, which were not explained to the customer by the salesman, among which were provisions to the effect that such contract could not be countermanded and that verbal agreements are not recognized.

PAR. 7. Respondent Ben Dial, trading as DeLuxe Art Studio, sold frames of many different qualities and designs.

Salesmen called upon prospective customers and represented to said customers that frames which they sold and offered for sale were "gold leaf" frames, and that the said "gold leaf" was of high quality and of high value. They also represented the actual value and usual value of such frames to be much higher than they in fact were. They also represented the glass in many of said frames to be imported Belgium glass.

In truth and in fact, the finish on said frames was not a "gold leaf" finish, nor were the frames "gold leaf" frames as the term "gold leaf" is used and accepted in the trade. Said frames were frames finished with burnished bronze, a material of inferior value.

The usual and actual value of said frames was substantially lower than the value represented by respondent Ben Dial and salesmen.

The glass in said frames was not imported Belgium glass, nor was it unique in quality or of high value.

PAR. 8. Respondent Ben Dial, in soliciting the sale of and selling frames and pictures, has adopted, and used as and for a trade name, the words "DeLuxe Art Studio" with which to carry on business.

Respondent Ben Dial used said designated trade name in soliciting orders from customers. Letterheads feature the said trade name and added phrase "Artists and Creators of the Original DeLuxe Paintings."

The term "Art Studio" is a standard and accepted term and recognized as such among the trade and the general public to designate

1019

Order

and denominate a studio or workshop in which an artist applies his art.

In truth and in fact, respondent Ben Dial does not maintain an independent studio in which artists are employed to paint or produce portraits, but the said portraits are enlarged and tinted by respondent Consolidated Portrait & Frame Co. The name DeLuxe Art Studio is a name adopted by all of the respondents in order to conceal the fact that respondent Consolidated Portrait & Frame Co. is the manufacturer and distributor of the pictures, and to mislead and deceive the public into believing that respondent Ben Dial maintains a studio of his own in which he manufactures his own pictures.

PAR. 9. In the course and conduct of their business, said respondents were and are in substantial competition with other corporations, individuals, firms, and partnerships also engaged in the manufacture, sale, and distribution of frames and pictures in commerce as herein set-out, who did not and do not sell their products by using "lucky envelopes," nor misrepresent the terms and conditions of sale of their pictures and frames, but who truthfully represent the value and quality of their products and truthfully represent the terms and conditions of sale of their said pictures and frames.

Each and all of the false and misleading statements and representations made by respondents in offering for sale and selling pictures and frames had, and now have, the tendency and capacity to, and do, mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that all of said representations are true. Acting under the mistaken and erroneous belief induced by the false and misleading statements and representations herein referred to, the public has purchased a substantial volume of respondents' products, with the result that trade has been unfairly diverted to respondents from their competitors who truthfully represent their products.

CONCLUSION

The aforesaid acts and practices of respondents are all to the injury and prejudice of the public and of 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 respondent thereto, testimony, and other evidence in support of the allegations of said complaint and in opposition thereto, taken before John

L. Hornor and Robert S. Hall, examiners of the Commission theretofore duly designated by it, briefs filed herein, and oral arguments by George Foulkes, counsel for the Commission, and John Nash and James O'Connor Roberts, attorneys 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 respondents, Consolidated Portrait & Frame Co., a corporation, and its officers, Daniel F. Orange and Charles C. Orange, individually and as officers of Consolidated Portrait & Frame Co., and Ben Dial, an individual trading as DeLuxe Art Studio, and their respective representatives, salesmen, and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, and 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, do forthwith cease and desist from:

1. Representing directly or in any other manner that colored or tinted photographs or photographic enlargements are paintings or "finely finished paintings."

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

3. Representing that respondents, or any of them, are conducting a special campaign or advertising campaign in any particular place or locality for the purpose of obtaining customers who will exhibit their pictures, or for any other purpose, unless such campaign is in fact then being conducted in such locality for such purpose.

4. Representing, through use of the "draw" or through the use of "lucky" envelopes, special discount checks, blanks, slips, coupons, or certificates, or through the use of any other device, plan, or scheme, or special advertising offer, that any customer would thereby 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.

5. Representing as the customary and regular prices or values for such pictures, prices and values which are in fact fictitious and greatly in excess of the prices at which said pictures are regularly and customarily sold.

It is further ordered, That respondent, Ben Dial, trading as DeLuxe Art Studio, his servants, agents, and salesmen, in connection with the advertising, offering for sale, sale and distribution in commerce, as

1019

Order

commerce is defined in the Federal Trade Commission Act, of colored or tinted photographs or enlargements having a photographic base, and frames therefor, do forthwith cease and desist from:

1. Representing that order blanks signed by purchasers are other than contracts for the purchase of a picture or pictures.

2. Using the term "gold leaf" or any other term of similar import and meaning to designate or describe frames finished in burnished bronze or materials other than "gold leaf."

3. Representing, by use of a trade name containing the term "Art Studio," or by use of any other name, or through any other means or device, that respondent, Ben Dial, owns, maintains, or operates a studio in which pictures are made by artists.

4. Representing that the domestic glass used in said frames is imported glass, or is superior in quality and value to its actual quality and value.

It is further ordered, That the respondents shall, within 60 days from 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.

IN THE MATTER OF
**CONSOLIDATED PORTRAIT & FRAME CO., AND PAUL
BROYLE, TRADING AS DE LUXE ART STUDIO, AND
DANIEL F. ORANGE AND CHARLES C. ORANGE**

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

Docket 2549. Complaint, Sept. 11, 1935—Decision, Mar. 11, 1939

Where corporation and certain officers and certain agent or employee thereof, as variously engaged in sale and distribution of pictures and frames, namely—

I. Corporation engaged in sale of such products through groups or crews of salesmen who (1) canvassed from house-to-house throughout the various States to procure orders therefor, and whom it (2) supplied with standard selling and operating supplies for their use as aforesaid, and including sample selling kits, order blanks, and envelopes, and selling paraphernalia such as "lucky envelopes," used to create impression in prospect's mind that, by reason of pretended lucky "draw" or other lure, he was to be recipient of special price advantage or free picture, and (3) with catalogs containing descriptions and prices of its merchandise and also instructions and method of approach to be employed by them in contacting prospective purchasers, and representations to be made by them in offering pictures and frames, and who (4) obtained and forwarded with said orders, snapshot, or other picture of customer or member of customer's family, as a rule, together with instructions pertaining to manner in which customer desired picture made;

II. The president and vice president of said corporation, who operated, controlled, and directed its corporate affairs and activities and managed, from the corporate address, the transaction of all the office business incident to offer and sale of their pictures as herein set forth, including keeping of files, correspondence with customers and others, and collection of delinquent accounts, including action in said respect under names of fictitious finance companies made use of by them in such connection; and

III. An individual who was engaged in sale of pictures made by said corporation and of frames purchased by it from manufacturers thereof, and who, in carrying on, under trade name "De Luxe Art Studio," such business, along with others similarly engaged and employed by it, through supervision of one of said groups or crews.

In soliciting and selling such pictures and frames, in substantial competition with others engaged in manufacture, sale, and distribution of such products and who do not sell the same through using "lucky envelopes" or misrepresenting terms and conditions of sale thereof, but truthfully represent value and quality of their products and terms and conditions of sale thereof—

(a) Represented to customers and prospective customers that the pictures which were made by said corporation were "paintings" or "finely finished paintings," through making use of latter characterization thereof in the order blanks supplied such salesmen, and through describing and referring to same as "paintings" in the sales catalogs with which it supplied such salesmen;