

## IN THE MATTER OF

## CORNELIUS P. VAN SCHAAACK, JR., TRADING AS MID-WEST SALES SYNDICATE AND MID-WEST PORTRAIT SERVICE

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

*Docket 3630. Complaint, Oct. 12, 1938—Decision, May 15, 1939*

Where an individual engaged, as case might be, under names "Mid-West Sales Syndicate" and "Mid-West Portrait Service," in offer and sale of sales promotion cards and certificates, and also, respectively, of lanterns, batteries, and bulbs, and tinted photographic enlargements, and, as thus engaged, in entering into written contracts with retail merchants contacted by his selling agents, under which said individual agreed, for a specified sum, to furnish merchants with certificates to be distributed to merchants' customers purchasing certain amount of his merchandise and to be redeemed by him as below set forth—

- (a) Represented, in advertising for agents to sell his merchandise in various newspapers and periodicals circulating among the various States and in the District of Columbia, that \$25 a day was the usual and customary commission earned by his salesmen "Giving Away Free Electric Lanterns Through All Retail Dealers";

Facts being his said salesmen did not, in ordinary and usual course of business, earn such amount or any other amount of money closely approximating such sum, but, as usual and customary earnings in due course of normal business, substantially less;

- (b) Represented, under name "Mid-West Sales Syndicate," to retail merchants solicited to enter into contracts for purchase of his "Red Guard Electric Lantern Certificates," to be distributed by merchant and redeemed by said individual for customers upon being sent in, as thereon set forth, with 80 cents to cover, at 10 cents each, six Chicago "Super Quality" batteries and two bulbs, that he was carrying on a national campaign to advertise such batteries and bulbs, and that such campaign was being carried on by aforesaid syndicate, and separate organization, so as to permit retail merchants to give away such lanterns free, and that adoption of such sales promotion plan by merchant would be without cost to him and would operate to merchant's profit, in that he would refund amount paid for certificates together with additional amount for each certificate sent to him for redemption by customers of merchant;

Facts being he was not engaged in any such campaign, and his said plan did not enable the merchant to give away such lantern free, but cost thereof was included in price paid by merchant's customers for batteries and bulbs which they were required to purchase when redeeming such lantern certificates and before receiving lantern, and plan did not operate without cost to merchant, nor to his profit, and he did not make such refunds, which were lure and snare devised and intended solely to secure execution of agreement by merchant.

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- (c) Represented, as aforesaid, that number of certificates which he would permit retail merchant to purchase was determined by manufacturer of such batteries and bulbs, and not by himself, and that lanterns had a retail and usual selling price of \$1.50 and were given away "free" to merchant's customers, and set forth such purported value on said certificates and that they were "Absolutely Free" when certificates were sent in for such trial order with 80 cents, as above indicated;

Facts being there was no such limitation placed by manufacturers of aforesaid products upon amount of certificates which retail merchant might purchase, said batteries and bulbs were sold outright to said individual by such manufacturer and could be disposed of by him as his own property, and said lantern did not have any such retail value and usual selling price, but cost thereof was included in price paid by merchant's customers for batteries and bulbs as above set forth; and

- (d) Represented that he would, at merchant's request, provide merchant with labels, circulars, and advertising matter to enable him properly to put plan into effect;

Notwithstanding fact he did not, in all cases, thus supply merchants; and

- (e) Represented, under name "Mid-West Portrait Service," in entering into contracts with merchants and in soliciting such business of them, as hereinabove indicated, that the complete portrait and frame described in certificates furnished by him to merchant for distribution to merchant's customers upon the purchase of a certain amount of merchandise, and to be redeemed by said individual upon being sent to him with 99 cents, represented as amount to "defray handling costs," had a retail value and usual selling price of \$5.50, and that the portraits furnished were "hand-painted oil portraits," facts being said portraits were not "hand-painted oil portraits," but enlarged photographs, colored, and did not have such retail value and usual selling price;

With effect of misleading substantial number of retail merchants and substantial portion of purchasing public into erroneous and mistaken belief that such false and misleading representations were true, and of inducing thereby substantial number of merchants to purchase his said certificates and to execute the contracts in connection therewith, and with effect that trade was thereby diverted unfairly to him from his competitors in commerce among the various States and in said District, and who truthfully represent their products:

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

Before *Mr. Edward E. Reardon*, trial examiner.

*Mr. George Foulkes* for the Commission.

*Hickey, Hall & Junge*, of Chicago, Ill., 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 Cornelius P. Van Schaack, Jr., individually and trading as Mid-West Sales Syndicate and Mid-West Portrait Service, hereinafter referred to as respondent

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has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Cornelius P. Van Schaack, Jr., an individual, is now, and has been for some time last past, doing business under the trade names of Mid-West Sales Syndicate and Mid-West Portrait Service, with his offices located at 549 West Randolph Street, Chicago, Ill. Under the name of Mid-West Sales Syndicate, respondent is engaged in the business of offering for sale and selling sales promotion cards, certificates, lanterns, batteries, and bulbs. Under the name of Mid-West Portrait Service respondent also sells sales promotion cards and certificates and in connection with a so-called sales promotion plan sells and distributes certain tinted photographic enlargements.

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said sales promotional plans, cards, and certificates, together with the advertising literature and various items of merchandise used in connection therewith, when sold, to be transported from his office and principal place of business located in Chicago, Ill., to the purchasers thereof located in various points in States of the United States other than the State of Illinois. Respondent has at all times mentioned herein maintained a course of trade and commerce in said sales promotion cards and certificates, and the merchandise sold in connection therewith, between and among the various States of the United States and in the District of Columbia.

In the course and conduct of said business, respondent is now, and has been, in substantial competition with other individuals, and with firms, partnerships, and corporations engaged in the business of selling and distributing promotional sales plans of various types, lanterns, batteries, and bulbs, photographs and similar commodities, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his business, respondent advertises in various newspapers, magazines, and periodicals having a circulation among and between the various States of the United States and in the District of Columbia, for agents to sell his merchandise, and represents to such prospective salesmen that \$25 a day is the usual and customary commission that will be earned by them through the sale of respondent's merchandise. Said advertising is as follows:

PREMIUM SALESMEN SUMMER SPECIAL; \$25.00 DAILY COMMISSION  
GIVING AWAY FREE ELECTRIC LANTERNS THROUGH ALL RETAIL DEALERS.  
MID-WEST, 549 WEST RANDOLPH, CHICAGO.

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In fact, respondent's salesmen do not, in the ordinary and usual course of business, earn \$25 per day or earn any other amount of money closely approximating \$25 per day. The usual and customary earnings of such salesmen, in due course of normal business, are substantially less than \$25 per day.

PAR. 4. In the course and operation of his business and in order to sell his products, respondent enters into a form of agreement or written contract with retail merchants who are contacted by respondent's selling agents.

Trading under the name of Mid-West Sales Syndicate, respondent enters into a form of contract with retail merchants in which he agrees for a specified amount of money, to furnish said retail merchants with certificates to be distributed to the merchants' customers upon said customers' purchasing a certain amount of merchandise, and respondent promises to redeem the certificates by distributing to said customers "one Red Guard electric lantern absolutely free." The written form of contract provides for the purchase by a merchant of so-called "Red Guard Electric Lantern Certificates" for which the merchant pays 10 cents a certificate, and distribution of the same to the merchant's customers by the merchant upon purchase by the customers of \$5 worth of the merchant's goods.

The certificate which the customer receives from the merchant upon purchase of the required amount of merchandise, is as follows:

**"RED GUARD" ELECTRIC LANTERN  
CERTIFICATE**

This Certificate is Given With Our Compliments and  
Entitles Holder to a

**"RED GUARD" ELECTRIC LANTERN  
"ABSOLUTELY FREE"**

When sent with a trial order for six Chicago,  
"SUPER QUALITY" Batteries @ 10¢ each, and two  
bulbs @ 10¢ each. Total cost 80¢, same being the  
regular retail price of these batteries and bulbs.  
Postage, Handling & Packing Charges Fully Prepaid.

Designate Color Desired by Marking

"X" in Square

☐ Red

☐ Green

☐ Blue

**\$1.50  
VALUE**

Picture

of

Lantern

**MID-WEST SALES SYNDICATE**

**549 W. RANDOLPH ST.,  
CHICAGO, ILL.**

Name \_\_\_\_\_

Address \_\_\_\_\_

City and State \_\_\_\_\_

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When the customer has received his certificate he may redeem the same by forwarding it to respondent with 80 cents for batteries and battery bulbs.

Respondent furnishes the retail merchants with various display posters and advertisements to be used by said retail merchants in distributing and using said cards.

PAR. 5. Trading under the name of Mid-West Sales Syndicate, respondent induces retail merchants to purchase his "Red Guard Electric Lantern Certificates" by making the following representations:

1. That respondent is carrying on a national campaign designed to advertise "Chicago Super Quality Batteries" and bulbs, and that the campaign is being carried on by the Mid-West Sales Syndicate, a separate organization, so as to permit retail merchants to give away "Red Guard Electric Lanterns" free.

2. That the adoption of respondent's plan of sales promotion by retail merchants will be without cost to them and will operate to their profit in that respondent will refund the amount paid for the certificates, together with an additional amount of money for each certificate sent to respondent for redemption by the merchant's customers.

3. That the number of certificates which respondent will permit a retail merchant to purchase is determined by the manufacturer of the batteries and bulbs and not by respondent.

4. That the lanterns have a retail value and usual selling price of \$1.50.

5. That the lanterns are given away "free" to the merchants' customers.

6. That respondent will, at the merchant's request, provide the merchant with labels, circulars, and advertising matter for the purpose of enabling the merchant to properly put the plan into effect.

PAR. 6. Respondent's representations as above set forth are grossly misleading, false, and untrue. In truth and in fact respondent has not been and is not engaged in carrying on a campaign designed to advertise Chicago Super Quality Batteries and Bulbs. Respondent's plan does not enable the merchant to give away to his customers "Red Guard Electric Lantern Free," but in fact the cost of said lanterns is included in the price paid by the merchants' customers for the batteries and bulbs they must purchase when redeeming the "Red Guard Electric Lantern Certificates" and before receiving the Red Guard Electric Lantern. Further, the said electric lantern does not have a retail value and usual selling price of \$1.50. The adoption of respondent's plan by retail merchants does not operate without

cost to them and does not operate to their profit. In fact, respondent does not make cash refunds to merchants entering into such contracts. The purported cash refunds to the merchants by the respondent are a lure and snare devised and intended for the sole purpose of securing execution of said agreements by retail merchants. In truth and in fact there is no limitation placed by the manufacturers of the batteries and bulbs upon the amount of certificates that a retail merchant can purchase. In fact the batteries and bulbs are sold outright to respondent by said manufacturers and respondent can dispose of the same as his own property. In truth and in fact respondent does not furnish the merchants with labels and circulars and advertising matter.

PAR. 7. Trading under the name of Mid-West Portrait Service, respondent, Cornelius P. Van Schaack, Jr., enters into a form of contract with retail merchants in which he agrees for a specified sum of money to furnish said merchants with certificates to be distributed to the merchant's customers upon said customers' purchasing a certain amount of merchandise and which respondent promises to redeem by distributing to said customers "Hand-Painted Oil Portraits, Complete with Frame." The written form of contract provides for the purchase by a merchant of so-called "Hand-Painted Oil Portrait Certificates" for which the merchant pays 10 cents a certificate and distribution of the same to the merchant's customers by the merchant upon purchase by the customers of \$5 worth of the merchant's goods. When the customer has received a certificate he may redeem the same by forwarding it to respondent with 99 cents, which amount is represented to "defray handling costs." Respondent furnishes the retail merchants with various display posters and advertisements to be used by said retail merchants in distributing and using trade cards and certificates.

PAR. 8. Trading under the name of Mid-West Portrait Service, respondent induces retail merchants to purchase his "Hand-Painted Oil Portrait Certificates" by making the following representations:

That the complete portrait and frame furnished customers have a retail value and usual selling price of \$5.50; that the portraits furnished customers are "hand-painted oil portraits."

PAR. 9. The representations which respondent makes trading under the name of Mid-West Portrait Service are false, misleading, and untrue. In truth and in fact said portraits do not have a retail value and usual selling price of \$5.50. Said portraits are not "Hand-Painted Oil Portraits" but are enlarged photographs colored.

PAR. 10. The use by the respondent of the foregoing false and misleading representations has the capacity and tendency to, and does,

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mislead a substantial number of retail merchants as well as a substantial portion of the consuming public, by inducing them to believe that the aforesaid representations made by the respondent and his representatives are true. The foregoing false and misleading representations on the part of respondent serve as inducements for substantial numbers of retail merchants to purchase respondent's certificates and to execute the contracts in connection therewith. As a result thereof, trade has been unfairly diverted to respondent from individuals, firms, and corporations likewise engaged in the sale and disposition of sales promotion plans, lanterns, batteries, bulbs, and colored photographs, and similar commodities and who truthfully represent their products. As a consequence, substantial injury has been done and is now being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 11. The aforementioned acts and practices of the respondent as herein alleged are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition 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 October 12, 1938, issued, and on October 14, 1938, served, its complaint in this proceeding upon respondent, Cornelius P. Van Schaack, Jr., individually, and trading as Mid-West Sales Syndicate and Mid-West Portrait Service, charging him 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 respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, 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. The respondent, Cornelius P. Van Schaack, Jr., an individual, is now, and has been for some time last past, doing business under the trade names of Mid-West Sales Syndicate and Mid-West Portrait Service, with his offices located at 549 West Randolph Street, Chicago, Ill.

Under the name of Mid-West Sales Syndicate, respondent is engaged in the business of offering for sale and selling sales promotion cards, certificates, lanterns, batteries, and bulbs.

Under the name of Mid-West Portrait Service respondent also sells sales promotion cards and certificates and in connection with a so-called sales promotion plan sells and distributes tinted photographic enlargements.

PAR. 2. The respondent, being engaged in business as aforesaid, causes said sales promotional plans, cards, and certificates, together with the advertising literature and various items of merchandise used in connection therewith, when sold, to be transported from his office and principal place of business located in Chicago, Ill., to the purchasers thereof at respective points of location in States of the United States other than the State of Illinois.

Respondent has at all times mentioned herein maintained a course of trade and commerce in said sales promotion cards and certificates, and the merchandise sold in connection therewith, between and among the various States of the United States and in the District of Columbia.

In the course and conduct of said business, respondent is now, and has been, in substantial competition with other individuals, and with firms, partnerships, and corporations engaged in the business of selling and distributing promotional sales plans of various types, lanterns, batteries, and bulbs, photographs, and similar commodities. in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the conduct of his business, respondent advertises in various newspapers, magazines, and periodicals having a circulation among and between the various States of the United States and in the District of Columbia, for agents to sell his merchandise, and represents to such prospective salesmen that \$25 a day is the usual and customary commission that will be earned by them through the sale of respondent's merchandise. Said advertisement is as follows:

PREMIUM SALESMEN SUMMER SPECIAL; \$25.00 DAILY COMMISSION  
GIVING AWAY FREE ELECTRIC LANTERNS THROUGH ALL RETAIL DEALERS.  
MID-WEST, 549 WEST RANDOLPH, CHICAGO.

## Findings

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In fact, respondent's salesmen do not, in the ordinary and usual course of business, earn \$25 per day or earn any other amount of money closely approximating \$25 per day. The usual and customary earnings of such salesmen, in due course of normal business, are substantially less than \$25 per day.

PAR. 4. In the operation of his business and in order to sell his products, respondent enters into a form of agreement or written contract with retail merchants who are contacted by respondent's selling agents.

Trading under the name of Mid-West Sales Syndicate, respondent enters into a form of contract with retail merchants in which he agrees for a specified amount of money, to furnish said retail merchants with certificates to be distributed to the merchants' customers upon said customers' purchasing a certain amount of merchandise, and respondent promises to redeem the certificates by distributing to said customers "one Red Guard electric lantern absolutely free." The written form of contract provides for the purchase by a merchant of so-called "Red Guard Electric Lantern Certificates" for which the merchant pays 10 cents a certificate, and distribution of the same to the merchant's customers by the merchant upon purchase by the customers of \$5 worth of the merchant's goods.

The certificate which the customer receives from the merchant upon purchase of the required amount of merchandise, is as follows:

**"RED GUARD" ELECTRIC LANTERN  
CERTIFICATE**

This Certificate is Given With Our Compliments  
and Entitles Holder to a

**"RED GUARD" ELECTRIC LANTERN  
"ABSOLUTELY FREE"**

When sent with a trial order for six Chicago,  
"SUPER QUALITY" Batteries @ 10¢ each, and two  
bulbs @ 10¢ each. Total cost 80¢, same being the  
regular retail price of these batteries and bulbs.  
Postage, Handling & Packing Charges Fully  
Prepaid.

Designate Color Desired by Marking  
"X" in Square

☐ Red      ☐ Green      ☐ Blue

MID-WEST SALES SYNDICATE  
549 W. RANDOLPH ST.,  
CHICAGO, ILL.

Name-----  
Address-----  
City and State-----

**\$1.50  
VALUE**

Picture

of

Lantern

When the customer has received his certificate he may redeem the same by forwarding it to respondent with 80 cents for batteries and battery bulbs.

Respondent furnishes the retail merchants with various display posters and advertisements to be used by said retail merchants in distributing and using said cards.

PAR. 5. Trading under the name of Mid-West Sales Syndicate, respondent induces retail merchants to purchase his "Red Guard Electric Lantern Certificates" by making the following representations:

1. That respondent is carrying on a national campaign designed to advertise "Chicago Super Quality Batteries" and bulbs, and that the campaign is being carried on by the Mid-West Sales Syndicate, a separate organization, so as to permit retail merchants to give away "Red Guard Electric Lanterns" free.

2. That the adoption of respondent's plan of sales promotion by retail merchants will be without cost to them and will operate to their profit in that respondent will refund the amount paid for the certificates, together with an additional amount of money for each certificate sent to respondent for redemption by the merchant's customers.

3. That the number of certificates which respondent will permit a retail merchant to purchase is determined by the manufacturer of the batteries and bulbs and not by respondent.

4. That the lanterns have a retail value and usual selling price of \$1.50.

5. That the lanterns are given away "free" to the merchants' customers.

6. That respondent will, at the merchant's request, provide the merchant with labels, circulars, and advertising matter for the purpose of enabling the merchant to properly put the plan into effect.

PAR. 6. Respondent's representations as above set forth are grossly misleading, false, and untrue.

In truth and in fact respondent has not been and is not engaged in carrying on a campaign designed to advertise Chicago Super Quality Batteries and Bulbs.

Respondent's plan does not enable a merchant to give away to his customers "Red Guard Electric Lantern Free," but in fact the cost of said lanterns is included in the price paid by the merchants' customers for the batteries and bulbs they must purchase when redeeming the "Red Guard Electric Lantern Certificates" and before receiving the Red Guard Electric Lantern. Further, the said electric lantern does not have a retail value and usual selling price of \$1.50. The adoption of respondent's plan by retail merchants does not

operate without cost to them and does not operate to their profit. In fact, respondent does not make cash refunds to merchants entering into such contracts.

The purported cash refunds to the merchants by the respondent are a lure and snare devised and intended for the sole purpose of securing execution of said agreements by retail merchants.

In truth and in fact there is no limitation placed by the manufacturers of the batteries and bulbs upon the amount of certificates that a retail merchant can purchase. In fact the batteries and bulbs are sold outright to respondent by said manufacturers and respondent can dispose of the same as his own property.

In truth and in fact respondent does not in all cases furnish the merchants with labels and circulars and advertising matter.

PAR. 7. Trading under the name of Mid-West Portrait Service, respondent, Cornelius P. Van Schaack, Jr., enters into a form of contract with retail merchants in which he agrees for a specified sum of money to furnish said merchants with certificates to be distributed to the merchant's customers upon said customers' purchasing a certain amount of merchandise and which respondent promises to redeem by distributing to said customers "Hand-Painted Oil Portraits, Complete with Frame." The written form of contract provides for the purchase by a merchant of so-called "Hand-Painted Oil Portrait Certificates" for which the merchant pays 10 cents a certificate and distribution of the same to the merchant's customers by the merchant upon purchase by the customers of \$5 worth of the merchant's goods. When the customer has received a certificate he may redeem the same by forwarding it to respondent with 99 cents, which amount is represented to "defray handling costs." Respondent furnishes the retail merchants with various display posters and advertisements to be used by said retail merchants in distributing and using trade cards and certificates.

PAR. 8. Trading under the name of Mid-West Portrait Service, respondent induces retail merchants to purchase his "Hand-Painted Oil Portrait Certificates" by making the following representations:

That the complete portrait and frame furnished customers have a retail value and usual selling price of \$5.50; that the portraits furnished customers are "hand-painted oil portraits."

PAR. 9. The representations which respondent makes trading under the name of Mid-West Portrait Service are false, misleading, and untrue.

In truth and in fact said portraits do not have a retail value and usual selling price of \$5.50. Said portraits are not "Hand-Painted Oil Portraits" but are enlarged photographs colored.

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## Order

PAR. 10. The use by the respondent of the foregoing false and misleading representations has had, and now has, the capacity and tendency to, and does, mislead a substantial number of retail merchants as well as a substantial portion of the purchasing public, into the erroneous and mistaken belief that such false and misleading representations are true. The foregoing false and misleading representations on the part of respondent serve as inducements for substantial numbers of retail merchants to purchase respondent's certificates and to execute the contracts in connection therewith.

As a result thereof, trade has been diverted unfairly to respondent from his competitors in commerce among and between the various States of the United States and in the District of Columbia, who truthfully represent their products.

## CONCLUSION

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

*It is ordered*, That respondent, Cornelius P. Van Schaack, Jr., individually, and trading as Mid-West Sales Syndicate and Mid-West Portrait Service, or under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of sales promotion plans, including cards and certificates, lanterns, batteries, bulbs, and colored and tinted photographs or pictures made from a photographic base or impression or other articles of merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that the respondent has been or is conducting an advertising campaign designed to advertise said products.

2. Using the term "free" or any other term of similar import or meaning to describe or refer to goods, wares, or merchandise, regularly offered in connection with the purchase of specified quantities of other merchandise.

3. Representing that the participation by merchants in respondent's sales promotional plan is without cost to said merchants.

4. Representing that respondent refunds to his customers the purchase price for such certificates or makes additional payments to his customers in connection with the presentation of the certificates for redemption.

5. Representing that the number of certificates which merchants may purchase from the respondent is limited.

6. Representing that the lanterns have a retail value and usual selling price of \$1.50 or that colored or tinted photographs have a retail value and usual selling price of \$5.50, or any other amounts in excess of the prices at which said lanterns or photographs are regularly and customarily sold in the ordinary course of business under normal conditions and circumstances.

7. Representing that the respondent supplies to his customers labels, circulars, or other advertising matter relating to said sales promotional plan.

8. Using the terms "hand-painted," "hand-painted oil portraits," or "painted," either alone or in conjunction with other terms, or any other terms of similar import or meaning, in any way to designate, describe, or refer to colored or tinted pictures, photographs, or photographic enlargements or other pictures produced from a photographic base or impression.

9. Representing any specified sum of money as possible earnings or profits of agents, salesmen, representatives, or distributors for any given period of time, which is not a true representation of the average net earnings or profits consistently made by respondent's active full-time agents, salesmen, representatives, or distributors in the ordinary course of business under normal conditions and circumstances.

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

## Complaint

## IN THE MATTER OF

## KASTAR SPECIALTY MANUFACTURING COMPANY, INC.

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

*Docket 3746. Complaint, Mar. 24, 1939—Decision, May 15, 1939*

Where a corporation engaged in the sale and distribution at retail of automobile accessories, including gages, brake-rod supporters, gear-shift balls, and a variety of other articles, in commerce among the various States and in the District of Columbia—

Represented that it was the manufacturer of such products and owned and operated, or controlled, the plant or factory in which they were made, through use of word "Manufacturing" in its corporate name and words "Mfd. by" in statement "Mfd. by Kastar Specialty Manufacturing Company, Inc., New York, U. S. A.," on display cards, labels, individual cartons, letterheads, invoices, and other printed matter distributed throughout the United States and otherwise, facts being it did not own, operate, or control a plant or factory for the manufacture of such accessories and other similar products sold and distributed by it, but filled orders for such articles with products which were made in a plant which it neither owned, operated, nor controlled;

With tendency and capacity, through use of words "Manufacturing" and "Mfd. by," as above set forth, to mislead and deceive purchasers and prospective purchasers by causing them mistakenly and erroneously to believe that it was the manufacturer of such products, etc., as above set forth, and to purchase its articles, on account of such mistaken and erroneous beliefs, from it as manufacturer, for dealing direct with which there has long been preference on part of substantial portion of purchasing and consuming public and dealers, as affording more reliance with reference to carrying out of contracts and lower prices, elimination of middlemen's profits, superior products, and other advantages:

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

*Mr. B. G. Wilson* for the Commission.

*Lackenbach & Hirschman*, of New York City, 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 Kastar Specialty Manufacturing Co., Inc., a corporation, 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, hereby issues its complaint stating its charges in that respect as follows: