

Syllabus

IN THE MATTER OF

V. PORTNOY & SONS, INC., TRADING AS ROOSEVELT
MERCANTILE COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 3576. Complaint, Sept. 3, 1938—Decisions, Mar. 27, 1940*

Where a corporation engaged in sale of new and second-hand clothing and other merchandise to purchasers in various other States, pursuant to orders, in practically all cases, received through the mails in response to advertisements and advertising literature circulated by it as below set forth, and by customers who had had no opportunity to examine merchandise until delivered and who relied entirely upon its descriptions and depictions thereof in its advertising, in competition with others engaged in sale and distribution of such products in commerce, and including many who truthfully advertise and represent the value, quality, age, color, size, style, and cleanliness of their products and truthfully represent nature of their business and business methods; in advertisements in many newspapers and periodicals having general circulation throughout the various States, and in advertising booklets, folders, pamphlets, and other forms of advertising literature which it in part directly distributed to members of purchasing public in various States and in part furnished to its customers, by whom same was placed in hands of said public—

- (a) Invited reader to "Be Your Own Boss!" and "Make 200% to 300% profit," operating "Quality used and new clothing business from your own store, home, or auto," with "No selling experience required" and "Catalogue Free," and to "Sell men's, women's, and children's clothing and shoes at big profits. Select from the big values in this new fall and winter catalog," etc., facts being it was impossible for purchasers of its said merchandise, because of unsatisfactory condition thereof as below set forth, to resell same at such profit, and it was difficult, in most instances, to resell same at any profit whatever, and in many cases resale thereof at any price whatsoever was impossible;
- (b) Represented, as aforesaid, that it shipped kind of merchandise depicted in such advertisements, and that single garments might be obtained in all sizes, colors, and styles, and that its said goods were of latest styles and that slightly used merchandise was always cleaned, pressed, and repaired by its own expert craftsmen and that it guaranteed to replace any goods not satisfactory, through such statements as "Always Finest Quality," "* * * All (coats) are good styled and slightly used. * * * Assorted sizes and colors," "Dresses Smartly Styled * * * Every one salable * * * assorted sizes * * *," etc., "Topcoats you can be proud to sell. * * * cleaned, repaired, and pressed by our own expert craftsmen," "Suits Genuine Wool! Only Slightly Used! * * * show their fine quality * * * Finely tailored * * * label of nationally known makers," etc., facts being pictures in advertising in question were not representative of merchandise sold by it, depicting frequently what appeared to be new, clean

Complaint

30 F. T. C.

- styles and modern clothing, goods shipped by it were, in most instances, used, dirty, and unfashionable, it did not ship on order merchandise in any requested size, color, or style, but usually filled orders by shipping customer whatever goods it then had on hand, whether or not in size, style or color requested, used merchandise sold by it was very rarely cleaned, pressed, and repaired before shipping, but ordinarily dirty, rumpled, worn, unpleasantly odorous, and in some cases torn and completely unsalable, its staff consisted of its president and principal stockholder, a packer and clerk, and work of cleaning or pressing, in rare instances in which done, was by independent commercial cleaner and not by its alleged expert craftsmen, and merchandise returned to it was ordinarily replaced with equally unsatisfactory goods; and
- (c) Represented that "Buying connections throughout the Nation enable us to supply you with quality merchandise at the lowest possible prices" and "We make it possible for you to beat all price competition with better quality merchandise," thus assuring "substantial business at a profit," facts being it had no buying connections enabling it to purchase quality merchandise at extraordinarily low prices, but bought its goods from peddlers, junk dealers, and charitable organizations, and occasionally made purchases of new merchandise from wholesalers who came to its door, and price paid by it for its goods was approximately same as that paid by competitors for same type of goods.

With tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous belief that its said representations were true, and with result, as direct consequence of erroneous and mistaken beliefs induced by its said acts and representations, as above indicated, that number of purchasing public bought substantial volume of its products and trade was thereby unfairly diverted to it from its competitors; to the injury of competition in commerce:

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

Before *Mr. Arthur F. Thomas* and *Mr. John P. Bramhall*, trial examiners.

Mr. R. A. McQuat for the Commission.

Weinstein & Sohn, 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 *V. Portnoy & Sons, Inc.*, a corporation trading under the name of *Roosevelt Mercantile Co.*, hereinafter referred to as the respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPHS 1. The respondent, V. Portnoy & Sons, Inc., is a corporation organized and doing business under the laws of the State of Illinois, with its principal office and place of business at 566 Roosevelt Road, Chicago, Ill. For more than 2 years last past, respondent has been and still is engaged in the business of selling new and second-hand clothing and other merchandise. Respondent causes said merchandise, when sold, to be transported from its aforesaid place of business in the city of Chicago, State of Illinois, to the purchasers thereof at their respective places of location in States of the United States other than the State of Illinois, and in the District of Columbia. Respondent maintains, and during all the times mentioned herein has maintained, a course of trade in said merchandise so sold by it in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent is, and at all times herein mentioned has been, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the sale and distribution of similar merchandise in commerce between and among the various States of the United States and in the District of Columbia. Among the competitors of the respondent in said commerce are many who truthfully advertise and represent the value, quality, age, color, size, style, and cleanliness of their merchandise, and who truthfully represent the nature of their business and their business methods.

PAR. 3. In the course of its said business, as hereinabove described, and for the purpose of inducing the purchase of its merchandise, respondent has made many statements concerning its business methods and concerning the value, quality, age, color, size, style, and cleanliness of its merchandise. Said statements and representations are made by means of advertisements inserted in newspapers and magazines, and by means of statements and picturizations in pamphlets, testimonials, letters, and catalogs, all circulated between and among the various States of the United States and in the District of Columbia. Among many, the following are typical examples of said advertisements:

Be Your Own Boss! Operate quality used and new clothing business from your own store, home or auto. Make 200% to 300% profit. No selling experience required. Everything furnished. Catalogue FREE. Write for it today.

MORE FOR YOUR MONEY

* * * * *

This catalog represents your opportunity to secure high grade used and brand new merchandise at the lowest possible prices.

Sell men's, women's, and children's clothing and shoes at big profits. Select from the big values in this new fall and winter catalog.

Complaint

30 F. T. C.

Buying connections throughout the nation enable us to supply you with quality merchandise at the lowest possible prices.

We make it possible for you to beat all price competition with better quality merchandise. In this way we assure you of substantial business at a profit.

Always finest quality.

Always lowest prices.

COATS

Popular Fur Trimmed Models!

\$12 \$18 \$24 per dozen

Ladies' popular winter coats, mostly fur trimmed. * * * All are good styled and slightly used. You will be amazed at their tremendous value and fine appearance. Assorted sizes and colors.

DRESSES

Smartly Styled

Real Silk

Slightly Used

\$3.00 \$4.00 \$5.00 \$7.50 per dozen

You will easily double your money with these fine real silk dresses. Here we offer you color, style, and quality at prices that seem impossible. Every one salable. Come in assorted colors, long and short sleeves. Assorted sizes, 16 to 46. We highly recommend the \$7.50 dresses. All expertly repaired and first-class condition. The other groups are fine leaders and good buys.

Topcoats you can be proud to sell. * * * These coats have been cleaned, repaired, and pressed by our own expert craftsmen.

SUITS

Genuine Wool! Only Slightly Used!

\$29 \$35 \$47 \$59 \$70 per dozen

Suits that actually show their fine quality of fabric. * * * Suits that have the earmarks of perfection. They are cleaned, repaired by our experts and pressed. Good wool material in latest patterns. Finely tailored, extra fine fabrics. Bears label of nationally known makers.

Men's Wool Pants, used but in good condition.

\$7.00 \$10.00 \$13.00 per dozen

Only slightly used and great values at these low prices.

Dear Friend: Here is another world beating selection of the best the market affords in slightly used and brand new clothing. * * * We have scoured the markets to bring you these unusual clothing values. * * *

Roosevelt Mercantile Company

Our Guarantee

We guarantee to replace any merchandise that is not satisfactory if it is returned to us within five days. You pay all delivery charges."

All of said statements, together with similar statements and with picturizations appearing in the respondent's advertising literature, but not set out herein, purport to be descriptive of respondent's merchandise and its business methods. In all of its advertising literature and through other means, respondent represents that it ships the kind of merchandise described and pictured in its catalog; that single garments may be obtained from it in all sizes, colors, and styles; that its new merchandise is of the latest style; that its slightly used merchandise is always cleaned, pressed, and repaired by its own expert craftsmen before shipment; that it guarantees to replace any merchandise that is not satisfactory; that its buying connections throughout the United States enable it to purchase quality merchandise at the lowest possible prices to beat all competition; and that purchasers of its merchandise can make large profits by reselling its merchandise.

PAR. 4. The said representations made by respondent are grossly exaggerated, deceptive, misleading, and false. In truth and in fact, respondent does not ship the kind of merchandise described and pictured in its catalogs. Single garments cannot be obtained from it in all sizes, colors, and styles. Its new merchandise is not of the latest style. Its used merchandise is not always cleaned, pressed, and repaired before shipment to customers. Respondent does not replace merchandise which is returned as unsatisfactory. It has no buying connections which enable it to buy quality merchandise at the lowest prices to beat all competition. Salesmen cannot make large profits by reselling merchandise purchased from respondent.

The true facts are that respondent buys its stock of merchandise on the open market from wholesale clothing merchants, army posts, and junk dealers. Respondent employs a few persons to clean, repair and press some of its merchandise. When an order is shipped to a customer, the package frequently contains merchandise that is old, out of style, shopworn, dirty, worn out, valueless, and of a different color, age, quality, style, and condition from the merchandise ordered by respondent's customers.

PAR. 5. The false and misleading representations used by respondent, as set forth herein, in connection with the sale of its merchandise, have the capacity and tendency to and do mislead and deceive members of the purchasing public into the mistaken and erroneous belief that said representations are true. As a direct consequence of the

Findings

30 F. T. C.

false, deceptive, and misleading representations of the respondent, and the erroneous and mistaken belief induced thereby, the purchasing public has purchased a substantial amount of merchandise from the respondent with the result that trade in said commerce has been diverted unfairly to respondent from competitors engaged in the business of selling clothing and other merchandise, who truthfully advertise and represent the value, quality, age, color, size, style, and cleanliness of their merchandise. As a result thereof, injury has been done and is now being done by the respondent to competition in commerce between and among the various states of the United States and in the District of Columbia.

PAR. 6. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice of the public and 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on September 3, 1938, issued and thereafter served its complaint in this proceeding upon the respondent, V. Portnoy & Sons, Inc., a corporation, trading under the name of Roosevelt Mercantile Co., charging it 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. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint and in opposition thereto were introduced before 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 said complaint, the answer thereto, testimony and other evidence, brief in support of the complaint (respondent not having filed brief nor requested oral arguments), 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, V. Portnoy & Sons, Inc., is a corporation organized, existing, and doing business under and by virtue

of the laws of the State of Illinois, with its office and principal place of business located at 566 Roosevelt Road in the city of Chicago in said State. Respondent trades under the name of Roosevelt Mercantile Co. Respondent is now and since the year 1935 has been engaged in the business of selling new and second-hand clothing and other merchandise.

PAR. 2. Respondent causes its merchandise, when sold, to be transported from its place of business in Chicago in the State of Illinois to purchasers thereof located in various other States of the United States. There is now and has been since the year 1935 a course of trade by the respondent in said merchandise in commerce between and among the various States of the United States.

PAR. 3. The respondent in the course of the operation of its business is in competition with other corporations and with individuals and firms also engaged in the business of selling and distributing clothing and other merchandise intended and sold for the same purposes for which respondent's merchandise is sold, in commerce between and among the various States of the United States. Among said competitors of the respondent in said commerce are many who truthfully advertise and represent the value, quality, age, color, size, style, and cleanliness of their merchandise and who truthfully represent the nature of their business and their business methods.

PAR. 4. In the course of the operation of its said business as hereinabove described and for the purpose of inducing individuals, firms, and corporations to purchase said clothing and other merchandise, the respondent has made use of advertisements inserted in many newspapers and magazines having a general circulation throughout the various States of the United States. Respondent has also made use of advertising booklets, folders and pamphlets, and other forms of advertising literature, some of which it directly distributes to members of the purchasing public located in the various States of the United States, and some of which it furnishes to its customers located throughout the United States who, in turn, place the literature in the hands of the purchasing public. In its said advertisements respondent has made many statements concerning its business methods and concerning the value, quality, age, color, style, and cleanliness of its merchandise. Among many, the following are typical examples of said advertisements:

Be Your Own Boss! Operate quality used and new clothing business from your own store, home or auto. Make 200% to 300% profit. No selling experience required. Everything furnished. Catalogue FREE. Write for it today.

Findings

30 F. T. C.

MORE FOR YOUR MONEY

* * * * *

This catalog represents your opportunity to secure high grade used and brand new merchandise at the lowest possible prices.

Sell men's, women's and children's clothing and shoes at big profits. Select from the big values in this new fall and winter catalog.

Buying connections throughout the nation enable us to supply you with quality merchandise at the lowest possible prices.

We make it possible for you to beat all price competition with better quality merchandise. In this way we assure you of substantial business at a profit.

Always Finest Quality.

Always Lowest Prices.

COATS

Popular Fur Trimmed Models!

\$12 \$18 \$24 per dozen

Ladies' popular winter coats, mostly fur trimmed. * * * All are good styled and slightly used. You will be amazed at their tremendous value and fine appearance. Assorted sizes and colors.

DRESSES

Smartly Styled

Real Silk

Slightly Used

\$3.00 \$4.00 \$5.00 \$7.50 per dozen

You will easily double your money with these fine real silk dresses. Here we offer you color, style and quality at prices that seem impossible. Every one salable. Come in assorted colors, long and short sleeves. Assorted sizes, 16 to 46. We highly recommend the \$7.50 dresses. All expertly repaired and first-class condition. The other groups are fine leaders and good buys.

Topcoats you can be proud to sell. * * * These coats have been cleaned, repaired and pressed by our own expert craftsmen.

SUITS

Genuine Wool! Only Slightly Used! \$29 \$35 \$47 \$59 \$70 per dozen

Suits that actually show their fine quality of fabric. * * * Suits that have the earmarks of perfection. They are cleaned, repaired by our experts and pressed. Good wool material in latest patterns. Finely tailored, extra fine fabrics. Bears label of nationally known makers.

Men's Wool Pants, used but in good condition.

\$7.00 \$10.00 \$13.00 per dozen

Only slightly used and great values at these low prices.

Dear Friend: Here is another world beating selection of the best the market affords in slightly used and brand new clothing. * * * We have scoured the markets to bring you these unusual clothing values. * * *

Roosevelt Mercantile Company

Our Guarantee

We guarantee to replace any merchandise that is not satisfactory if it is returned to us within five days. You pay all delivery charges.

All of such statements, together with similar statements and picturizations appearing in respondent's advertising literature, purport to be descriptive of respondent's business status and methods and of respondent's merchandise. In all of its advertising literature, and by other means, respondent represents that it ships the kind of merchandise pictured in connection with said literature, that single garments may be obtained in all sizes, colors and styles; that its new merchandise is of the latest style; that its slightly used merchandise is always cleaned, pressed and repaired by its own expert craftsmen; that it guarantees to replace any merchandise that is not satisfactory; that its buying connections throughout the United States enable it to purchase quality merchandise at prices lower than all of its competitors and that purchasers of its merchandise can make large profits by reselling the same.

PAR. 5. Respondent does an annual gross business of approximately \$100,000. Practically all of respondent's orders for merchandise are received through the mails in response to advertisements and advertising literature circulated as hereinabove described. The customer thus having no opportunity to examine the merchandise until delivered, must rely entirely upon the respondent's descriptions and picturizations in its advertising literature. The Commission finds that the representations thus made by respondent are grossly exaggerated, misleading, and untrue. The pictures of merchandise appearing in respondent's advertising literature are not representative of the merchandise sold by respondent. On many occasions the merchandise so pictured by respondent appears to be new, clean, stylish, and modern clothing, whereas the merchandise shipped by respondent in response to an order is in most instances used, dirty, and unfashionable.

Respondent does not ship on order merchandise in any requested size, color, or style but as a matter of usual practice fills its orders by shipping to the customer whatever merchandise it may then have on hand, whether or not it may be in the size, style, or color requested.

The used merchandise sold by respondent is very rarely cleaned, pressed, and repaired before shipping; usually the merchandise is dirty, rumpled, worn, unpleasantly odorous and, in some cases, torn and completely unsalable. In the rare instances when such merchandise is cleaned or pressed before shipment, it is sent to an independent commercial cleaner. This work is not done by respondent's

Order

30 F. T. C.

"expert craftsmen," because respondent does not employ any expert craftsmen, its entire staff consisting of respondent's president and principal stockholder, V. Portnoy, and a packer and a clerk.

When merchandise is returned to respondent as unsatisfactory, respondent customarily replaces this merchandise with other merchandise equally unsatisfactory. The Commission further finds that respondent has no buying connections which enable it to purchase quality merchandise at extraordinarily low prices. As a matter of fact, respondent buys its merchandise from peddlers, junk dealers, charitable organizations, and occasionally purchases new merchandise from wholesalers who come to its door. The price that respondent pays for its merchandise is approximately the same as that paid by its competitors for the same type of goods.

Because of the above-described unsatisfactory condition of respondent's merchandise, it is impossible for the purchasers thereof to resell the same at a profit of 200 or 300 percent as represented by respondent. In fact, in most instances it is difficult to resell this merchandise at any profit whatsoever, and in many cases it is impossible to resell the merchandise at any price whatsoever.

PAR. 6. The use by the respondent of the false and misleading statements and representations in its catalogs, circulars, pamphlets, and other advertising media, in offering for sale and selling its merchandise in commerce, has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations are true. As a direct result of these erroneous and mistaken beliefs, induced by the acts and representations of the respondent as hereinbefore enumerated, a number of the purchasing public have purchased a substantial volume of respondent's products, with the result that trade has been unfairly diverted to the respondent from its competitors, to the injury of competition in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice and injury of the public and of the respondent's competitors and constitute unfair and deceptive acts and practices in commerce and 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 the

respondent, testimony and other evidence taken before A. F. Thomas and John P. Bramhall, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief on behalf of the Commission (counsel for the respondent not having filed any brief nor requested oral argument), and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, V. Portnoy & Sons, Inc., a corporation, trading as Roosevelt Mercantile Co., or trading under any other name or names, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of its merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that its merchandise is new, clean, or only slightly used, when such is not the fact, or that its used merchandise is of high value or quality or of the latest style.

2. Representing that merchandise which is used, dirty, and unfashionable may be readily resold at a profit.

3. Representing that respondent can or will fill orders for garments in assorted sizes or specified colors, when such is not the fact.

4. Representing that used merchandise sold by respondent is repaired, cleaned, or pressed by expert craftsmen employed by respondent, when such is not the fact.

5. Representing that respondent has buying connections not available to its competitors, or that respondent is able to purchase wearing apparel or other merchandise at prices lower than the prices at which its competitors can purchase similar merchandise.

6. Representing as the profit to be derived from the resale of respondent's merchandise any amount or percentage in excess of the average, usual and customary amount or percentage of profit which has actually been derived from the resale of respondent's merchandise under normal conditions and in due course of business.

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

IN THE MATTER OF

J. W. MARROW MANUFACTURING COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 23, 1914

Docket 3626. Complaint, Oct. 8, 1938—Decision, Mar. 27, 1940

Where a corporation engaged in manufacture, sale, and distribution of face powders, creams, lotions, hair shampoos, and kindred cosmetics to purchasers in various other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution, in commerce as aforesaid, of similar products, and including those who do not in any way misrepresent the quality or character of the respective products made, sold, and distributed by them; in advertising its "massage," "tissue" and "acne" creams and its "muscle oil," "Mar-O-Oil Shampoo" and "Trimal for Cuticle," in advertisements in periodicals of national circulation and in radio broadcasts and through circulars—

- (a) Represented that its "massage" and "tissue" creams were nourishing and nutritive, and that latter prevented lines and corrected wrinkles, and that its said oil smoothed lines and wrinkles and was especially effective in removing fine lines around the eyes and mouth, facts being ingredients contained in products aforesaid do not supply nutrition to or nourish skin, and none of such products were nutrients when applied externally to skin, and would not smooth out lines and wrinkles from face and were not effective in removing, as aforesaid, lines around eyes and mouth;
- (b) Represented that its "acne" cream was antiseptic and aided in correcting blemishes, pimples and enlarged pores, facts being it was not an antiseptic, acne is due to disturbance of glands which feed pores of skin, commonly manifesting itself in form of pimples, and aforesaid cream did not correct blemishes, pimples, or enlarged pores;
- (c) Represented that its said shampoo revitalized starved dry hair and corrected cause of too oily hair, and that all beauty parlors and beauty shops gave "Mar-O-Oil" treatments, facts being not all beauty parlors and barber shops gave such treatments, cause of dry hair is failure of certain glands to secrete oil enough to keep hair in normal condition, it is impossible both to stimulate and, at same time, retard flow of oil from glands in question, and its said products had no value for causing such glands either to cease producing excessive amount of oil or start producing more, and its said shampoo did not accomplish results aforesaid with respect to either starved, or dry, or too oily hair;
- (d) Represented that its said "Trimal for Cuticle" would, among other things, leave live cuticle satin soft, while its "light nutrient oils" were "absorbed deeply by the nail roots to promote the healthy growth of flawless finger nails," facts being finger nails, are merely prolongations of skin, can be revitalized only through action of blood on tissues underlying nails, and its said preparation contained no oil or ingredient having effect on nails and did not revitalize same; and
- (e) Represented that scientists in motion picture studios who had devised definite rules for successful photographic beauty, invariably specified use