

IN THE MATTER OF
ASSOCIATED NEWS PHOTOGRAPHIC SERVICE, INC.,
BLACKSTONE STUDIOS, INC., AND LEO FRIED AND
WILLIAM SHAPIRO

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

Docket 3561. Complaint, Aug. 29, 1938—Decision, Apr. 22, 1941

Where two corporations and two individuals who were general officers thereof, together owned said corporations' capital stock, and directed and controlled their policies and practices, engaged in making photographs and photographic prints, and in interstate sale and distribution thereof to subjects and purchasers, in substantial competition with others, including those who do not, in respect of their business status or otherwise, make false representations; originally securing names of individuals for solicitation through arrangements with college and university alumni associations for photographing their members, and carrying on usual business only of a photographic studio under name of Blackstone Studios, Inc., which continued to finish their photographs during all the period here involved—

Following an extension of their business to include solicitation of trade association business under arrangements by which they acted as "official photographer," and, more particularly, in soliciting business of persons of prominence in various communities, usually the smaller cities, in which they made arrangements with various newspapers in return for a general letter of introduction designating them as "official photographers" or "representatives" of said papers, incident to the undertaking of which they organized, for use in all solicitation of and contacts with members of public, Associated News Photographic Service, Inc., as second of two corporations first referred to—

Made use, as aforesaid, of word "News" as included in said corporate and trade name (1) through aforesaid newspapers' letters, identifying "Associated News Photographic Service, Inc.," as particular paper's "official photographer" engaged in obtaining photographs for paper's files or use, and bespeaking any courtesies prospect might extend with no obligation on his part, and (2) through telephone contacts by their "bookers" or representatives, each of whom they supplied with letter of introduction stating that said individual was "authorized to take photographs for the files of the Associated News to be serviced to the leading trade and financial publications and to the press," and who advised prospect that the Associated News or the Associated News Photographic Service, Inc., desired his photograph in connection with some coming event or for its files for newspaper or other publicity service, and thereafter following such contacts at which the absence of any obligation was emphasized, and following return of proofs, and ostensibly to secure subject's choice for press release, sought and frequently secured orders of prospect;

Complaint

Facts being that said corporations and individuals ordinarily had no knowledge at the time photographs of subjects were made as to whether or not such pictures would be printed in newspapers or other publicity media, they were not engaged in the business of procuring pictures for use of newspapers in spot news, they did not operate as a photographic department of any newspaper or news agency, such as Associated Press News Photographic Service, engaged in furnishing to the press current news pictures; the major portion of their sales of "glossy" prints suitable for reproduction in newspapers was to the individuals concerned or to publicity mediums other than newspapers, and less than 3 percent of their gross income was from sale of said glossy prints to newspapers; and notwithstanding occasional sale or furnishing by them of prints to newspapers, their real business was sale of finished pictures to persons photographed;

With effect, through false and deceptive representations, implications and use of names, of misleading and deceiving members of the public and unfairly diverting trade from competitors, and with capacity and tendency, further, through use of said name, to mislead and deceive persons solicited into believing that their pictures were desired for newspaper use, and that business in question was that of news or press photographers, and to conceal their real purpose:

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

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

Mr. John M. Russell for the Commission.

Mr. Boris Marcus, of New York City, for respondents.

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 Associated News Photographic Service, Inc., a corporation, Blackstone Studios, Inc., a corporation, Leo Fried and William Shapiro, individuals, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Associated News Photographic Service, Inc., and Blackstone Studios, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of New York, with their principal places of business located at 20 West Fifty-seventh Street, in the city of New York in said State.

Leo Fried is president and William Shapiro vice president of both of said corporations respectively.

The individual respondents, acting together and in cooperation with each other, have dominant control of the advertising policies and business activities of said corporate respondents.

PAR. 2. Respondents now are, and have been for over two years last past, engaged in the business of taking photographs of persons, and in the sale and distribution of said photographs. Respondents cause said photographs, when sold, to be transported from the place of business of Blackstone Studios, Inc., in the State of New York, to purchasers thereof located in States of the United States other than the State of New York and the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said photographs sold and distributed by them in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business, respondents are in active and substantial competition with other corporations and individuals, and with partnerships and firms likewise engaged in the sale and distribution of photographs in commerce between and among the various States of the United States and in the District of Columbia. Among such competitors there are many who do not make any misrepresentations or false statements concerning the nature and character of their business.

PAR. 4. Associated Press, Inc., is a corporation organized and existing for many years last past under the laws of the State of New York as a news gathering association, with its main office located at 383 Madison Avenue, in the city of New York, with branch offices scattered throughout the United States. It has a department called Associated Press Photographic Service, which cooperates therewith throughout the United States by taking pictures of many of the persons who are the subject of some of its news items which, with said pictures, it furnishes to the newspapers of the country. It is generally recognized as a leading news agency in the United States. It has a valuable good-will and prestige on account of the interest in, and accuracy of, its news and is well and favorably known to the reading public.

PAR. 5. Agents of respondents call on prospects, located throughout the United States, and by making the statement that they are from the Associated Press, and similar statements herein later detailed, try to secure, or secure, permission to take their pictures under the guise they are taking their photographs for the press or publication therein. Thereafter, photographers representing respondents, call on said prospects and take their pictures. When the photographs are

made, all of the respondents, or their representatives, try to sell them to said prospects at exorbitant prices through the use of the false and misleading statements hereinafter mentioned.

PAR. 6. In the course and conduct of said business, and for the purpose of securing permission to take said photographs, and inducing the purchase of them by members of the purchasing public, respondents, directly, by the use of respondent Associated News Photographic Service, Inc's., name, and through their salesmen, solicitors, and agents, have made, and make, many representations concerning the character and nature of their business to customers, or prospective customers, located throughout the United States. Respondents cause their agents to display "press cards" to prospects and to represent that they are connected with the Associated Press or the New York Times; that one or both of said respondent corporations is directly or indirectly connected with the leading newspapers of the United States; that they represent practically all the New York City newspapers, and have a following throughout the country; that prospect's picture is wanted by the New York Times and other prominent newspapers; that they are taking pictures of prominent men for use in trade publications, newspapers, and other publications; that they are obtaining said photographs for the files of Associated News, which furnishes news to the leading trade and financial publications and to the press; and that Associated News is likely to get calls for their picture.

PAR. 7. The said statements and representations, and similar statements and representations made by respondents, are deceptive, false, misleading, and untrue. In truth and in fact, the "press cards" respondents' agents display are simulated and merely used to impress and deceive prospects; said representatives or agents are not from the Associated Press, or the New York Times. Neither respondents nor their agents have any connection, direct or indirect, with any newspaper or publication. They do not want prospects' photographs for any of respondents' files, or to be serviced to the leading trade and financial publications or to the press, but merely in order to sell them to prospects at exorbitant prices. Associated News Photographic Service, Inc., gets practically no calls for any of said photographs.

PAR. 8. Each and all of the false and misleading statements and representations made by respondents as to the nature and character of their business as aforesaid were, and are, calculated to have, have had, and now have a tendency and capacity to, and do, mislead and

Findings

32 F. T. C.

deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true, and into the belief that respondents' agents represent the Associated Press, Inc. As a direct result of this erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of respondents' product with the effect that trade has been diverted unfairly to respondents from competitors likewise engaged in the business of taking, selling, and distributing photographs, who truthfully advertise the nature and character of their business. As a consequence thereof, injury has been done, and is being done, by respondents to competition among and between the various States of the United States and in the District of Columbia.

PAR. 9. The aforesaid acts and practices of respondents as herein alleged are all to the prejudice of the public and of respondents' 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 August 29, 1938, issued and subsequently served its complaint in this proceeding upon respondents Associated News Photographic Service, Inc., a corporation, Blackstone Studios, Inc., a corporation, Leo Fried and William Shapiro, individuals, charging them 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 the complaint were introduced by counsel for the Commission and in opposition to the allegations of the complaint by counsel for respondents 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, report of the trial examiner and exceptions thereto, 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 make this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Associated News Photographic Service, Inc., and Blackstone Studios, Inc., are corporations organized, existing, and doing business under and by virtue of the laws of the State of New York, with their principal place of business located at 20 West Fifty-seventh Street, New York, N. Y. Respondent Leo Fried is president of Associated News Photographic Service, Inc., and of Blackstone Studios, Inc., and owns one-half of the capital stock of each corporation. Respondent William Shapiro is vice president and treasurer of Associated News Photographic Service, Inc., and of Blackstone Studios, Inc., and owns one-half of the capital stock of each corporation. The individual respondents William Shapiro and Leo Fried, through their ownership of the capital stock of the corporate respondents, dominate, direct, and control the policies and practices of Associated News Photographic Service, Inc., and Blackstone Studios, Inc.

PAR. 2. Respondents are engaged in making and selling photographs and photographic prints. They or their representatives or agents make photographs in Massachusetts, Connecticut, New York, Pennsylvania, Maryland, and other States, and negatives of such pictures are delivered to respondents' place of business at 20 West Fifty-seventh Street, New York, N. Y., where they are developed and prints or finished pictures are made; thereafter prints or finished pictures made from many of such negatives are shipped from said place of business in New York to purchasers located in the several States of the United States and in the District of Columbia. Respondents have maintained a constant course of trade and commerce in said prints and pictures sold and distributed between and among the various States of the United States and in the District of Columbia.

PAR. 3. Many methods are used by respondents in securing the names of individuals whom they subsequently solicit to pose for photographs and, if successful, whom they seek to sell finished prints of such pictures. Among the principal methods used are the following:

Respondents make arrangements with college and university alumni associations to photograph members of such associations. Pursuant to such arrangements a list of members of the alumni association is furnished to respondents; the association supplies respondents with a general letter of introduction to its members advising of the arrangement made and that no obligation is incurred by

Findings

32 F. T. C.

either the association or the member who poses for a picture; and a picture of each alumnus photographed by respondents is supplied to the alumni association without cost to it.

Respondents make arrangements with trade associations to act as "official photographer" for the association at conventions, and frequently agree to furnish prints of such of the pictures as may be desired to the association for its own uses.

Respondents make arrangements with various newspapers, generally those located in smaller cities, to photograph persons of prominence in communities in which such papers circulate, and in return for a general letter of introduction designating respondents as "official photographers" or as "representatives" of such newspapers they agree to furnish at least one print of each such photograph without any charge therefor to the newspaper for its use or files. An example of such letter of introduction is as follows:

The Associated News Photographic Service, Inc., is the official photographer for The Record Herald. The Associated News is engaged in obtaining photographs for our files or use. Courtesies will be appreciated, and there will be no obligation on your part.

Respondent William Shapiro stated in substance that the purpose of such arrangements is to sell pictures to the person photographed. His testimony is:

We sent down and explained the type of business we do, photograph people, and we have a big file at that time and we are willing to photograph people for our own file on the chance of people, when they see the proofs, wanting them. When they see the proofs if they want to buy any pictures they are welcome.

In addition to the several methods stated, respondents photograph or seek to photograph many individuals of more or less prominence whose names are secured in other ways. These persons are first contacted by telephone by a representative or agent of respondents called a "booker" who advises such person that the "Associated News" or the "Associated News Photographic Service, Inc.," desires such person's photograph in connection with some coming event with which the person solicited may be connected, or that the photograph is desired for the files of the "Associated News" or the "Associated News Photographic Service, Inc.," for service to newspapers or other publicity mediums. In these contacts respondents emphasize that no obligation is incurred by the prospective subject. In those instances where the person solicited consents to pose, photographers employed by respondents call at a time appointed and photograph the subject. In connection with these transactions the photog-

raphers carry, and frequently exhibit to prospective subjects, a general letter of introduction from respondent Associated News Photographic Service, Inc., the usual text of which is:

This will introduce Mr. _____ who is authorized to take photographs for the files of the Associated News to be serviced to the leading trade and financial publications and to the press.

Any courtesy shown Mr. _____ will be greatly appreciated.

Some days subsequent to the taking of photographs proofs thereof are delivered to the subject, either personally by salesmen employed by respondent or by other means such as mail or messenger. If delivered by one of respondents' employees, such employees directly or indirectly suggests that respondents would like to sell finished copies of one or more of the pictures to the subject. When the subject is interested in purchasing pictures, a discussion of prices and terms follow, and sales are thus frequently consummated. In the event the proofs were delivered by mail or messenger they may be accompanied by a letter from Associated News Photographic Service, Inc., the usual text of which is:

We are returning herewith the complete set of photographic proofs from the negatives we recently took of you. Will you be good enough to make your selection for press release and return same to us. You may keep the balance of the proofs with our compliments in return for the courtesy extended to us. We wish to advise you that your negatives are carefully preserved in our files. Should you desire to obtain some finished portraits from them we shall be glad to meet your requirements.

Within a reasonable time thereafter a representative of respondents may call upon the subject, ostensibly to secure the proof selected by the subject for "press release" and at that time such representative engages in the sales procedure hereinabove outlined in an effort, which is frequently successful, to induce the subject to purchase prints of one or more of the photographs made.

PAR. 4. The business of respondents was first carried on under the name of Blackstone Studios, Inc., and during this time, except for the usual business of a photographic studio, it was limited to arrangements with college or university alumni associations and was carried out in the manner stated in paragraph 3 hereof. Subsequently Associated News Photographic Service, Inc., was incorporated and the business of respondents was extended to include other methods, such as those also set out in paragraph 3 hereof. The purpose and value of the name of the new corporation was stated by respondent William Shapiro to be:

Because we cannot call up and say we want the picture for the Blackstone

Findings

32 F. T. C.

Studios file we incorporated (d) Associated News Photographic Service. "We want your picture for our file."

The two corporations operate together; the finishing is done by Blackstone Studios, Inc., and all solicitation and contacts with members of the public looking toward securing permission to make pictures of individuals and the sale thereof are carried on by or in the name of Associated News Photographic Service, Inc.

PAR. 5. Respondents maintain a file of negatives of the pictures made, and this file is used in various ways. Sometimes finished pictures are later sold to subjects who did not purchase at the time the pictures were made, and sometimes reorders for such pictures are received from such subjects. Prints known as "glossy" prints, which are suitable for use for reproduction in newspapers and other journals, are also made up from respondents' files and sold. These glossy prints are sometimes sold to the subjects themselves for distribution to mediums of publicity, or other uses, and sometimes sold to advertising agencies, newspapers, trade journals, and others. In furnishing glossy prints to newspapers or other publications sometimes no charge is made, or payment is made by the publication with the picture of an acknowledgment of its source.

PAR. 6. With minor exceptions all pictures taken by respondents are made without any prior arrangement regarding compensation therefor, and respondents rely for their remuneration upon being able to sell finished pictures to a reasonable proportion of the subjects photographed. Respondents are successful in selling finished pictures to 25 percent to 30 percent of the subjects photographed, and these sales are made at prices which customarily range from \$2.50 to \$75 or more per finished print, depending upon the size and finish of the print and other considerations. Taking into account only the sales of glossy prints made up from negatives kept on file by respondents, the major portion of such sales is to the individuals concerned or to publicity mediums other than newspapers, and a minor portion of the sales are to newspapers. Of this minor portion but a small part is for use with current news. Less than 3 percent of respondents' gross income is from the sale of such glossy prints to newspapers.

PAR. 7. Respondents represent that pictures are desired for "press release" and "for the files of the Associated News to be serviced to the leading trade and financial publications and to the press," whereas in truth and in fact, with possible rare exceptions, respondents have no knowledge at the time photographs of subjects are made as to whether or not such pictures will be printed in newspapers or other publicity mediums, and the pictures are not taken by respondents for

the purpose of making sales of glossy prints thereto to newspapers or other publications. Respondents are not engaged in the business of procuring pictures for the use of newspapers in spot news. They do not operate as the photographic department or agency of any newspaper or news agency engaged in furnishing to the press spot or current news or news pictures. From time to time prints of pictures taken by respondents are furnished or sold to newspapers when such papers do not have or cannot readily procure pictures of persons whose photographs are desired, provided respondents have such pictures in their files. These transactions, and the maintenance of the file or library hereinbefore mentioned, are, however, only incidental to the real business of respondents, which is the sale of finished pictures to persons photographed.

PAR. 8. The use of the names "Associated News" and "Associated News Photographic Service, Inc.," in seeking permission to photograph individuals carries with it the implication that the pictures are desired for purposes of publication as or with news and that the pictures are being taken for or on behalf of some news-gathering agency for immediate use. The manner of soliciting prospective subjects, such as connecting the request with some event in which the subject may be interested and falsely stating that the picture is desired for publicity purposes in connection with such event, tends to, and does, further the implication carried by the names used, as do also the representations concerning purported connections maintained by respondents with specific newspapers, whereas in truth and in fact the purpose in taking a picture is to sell copies to the person photographed. The false and deceptive implications of the names used and the false and deceptive representations and implications used in soliciting prospective subjects have the capacity and tendency to, and do, mislead and deceive members of the public and unfairly divert trade to respondents from competitors engaged in the sale of photographs to members of the public.

PAR. 9. The Associated Press, a news-gathering agency cooperatively maintained by many newspapers, has a department of its business engaged in securing photographs of news events and persons concerned in or connected with news events, copies of which photographs are furnished to newspaper members of the Associated Press for use in such newspapers, but copies of such pictures are not furnished or sold to persons who may appear in such pictures. This department is known as Associated Press "News Photographic Service." The use by respondents of the corporate name "Associated News Photographic Service, Inc.," has the capacity and tendency to

Order

32 F. T. C.

mislead and deceive the members of the public solicited by respondents into believing that their pictures are actually then and there desired for newspaper use and that respondents' business is that of news or press photographers. Further, the use by respondents of the names "Associated News" and "Associated News Photographic Service, Inc.," separately or in conjunction with the accompanying representations hereinbefore set out, has the capacity and tendency to mislead and deceive members of the public as to respondents' purpose in soliciting pictures, and to conceal the fact that respondents' real purpose is to sell to them photographs of themselves.

PAR. 10. Respondents in the course and conduct of their business have been, and are, in substantial competition in commerce with other individuals, partnerships, and corporations engaged in the making of photographs and the sale of prints thereof. Among said competitors of respondents are many who do not in any manner misrepresent their business status or make other false representations to procure and induce the sale of their products.

CONCLUSION

The aforesaid acts and practices of the respondents are to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony, and other evidence in support of the allegations of said complaint and in opposition thereto taken before examiners of the Commission theretofore duly designated by it, report of the trial examiner and exceptions thereto, briefs in support of the complaint and in opposition thereto, and oral arguments of counsel; 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 respondents Associated News Photographic Service, Inc., a corporation, Blackstone Studios, Inc., a corporation, Leo Fried and William Shapiro, individuals, either jointly or severally, and their representatives, agents, and employees, directly or through any corporate or other device, or by implication, in con-

nection with the solicitation of permission to make photographs or the offering for sale, sale, or distribution of photographs and photographic prints in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "News," or any other word or term of similar import or meaning, in the corporate name of respondent Associated News Photographic Service, Inc., or as a part of any other trade or corporate name, to designate or describe a business which is principally that of selling photographic prints to persons photographed.

2. Representing or implying in any manner to any prospective customer that respondents, or any of them, are news or press photographers, or that any photograph solicited is for press or publicity purposes, unless such photograph is actually for immediate news or press use.

It is further ordered, That respondents shall, within 60 days after the 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
UNIVERSAL INDUSTRIES, INC., ABRAHAM LEONARD
KOOLISH, MRS. IDA B. KOOLISH AND GEORGE WILLIAM
EHRlich, INDIVIDUALLY AND AS OFFICERS AND
DIRECTORS OF UNIVERSAL INDUSTRIES, INC.

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

Docket 3882. Complaint, Aug. 30, 1939—Decision, Apr. 24, 1941

- Where a corporation and two individuals who were officers and directors thereof and controlled and directed its policies, acts and practices and who had been theretofore engaged in carrying on through the guise, successively, of two other corporate instrumentalities, such acts and practices as hereinbelow set forth; engaged in interstate sale and distribution to retailers and other purchasers of a sales stimulator plan and device, including trade cards, circulars, and other advertising material, and also tableware and other products used as premium merchandise in connection therewith;
- In advertising in newspapers, periodicals, circulars, letters and bulletins to procure salesmen and distributors to solicit orders for said plan, under which cards given by merchant to his customers, when stamped with purchases aggregating \$5 or other specified sum, and payment of 49 cents additional, entitled customer to a 5-piece set of silverware—
- (a) Represented, directly or by implication, that the corporation in question was organized in 1909, had been engaged in the sale of sales stimulator plans for 29 years, had strong financial ratings in all commercial agencies, including Dun & Bradstreet, and that its assets amounted to \$200,000; facts being said representations were false: the corporation was organized in 1939 and had been engaged in the sale of said plan only since then, it did not have financial ratings in any commercial agencies, and its assets were substantially less than aforesaid sum;
 - (b) Represented, as aforesaid, that, in the sale of such sales plan and merchandise, their salesmen and distributors earned \$20 a day, \$400 a month, or various other sums approximating thereto, in the ordinary course of their business under normal conditions; facts being they earned substantially less than such amounts;
 - (c) Represented that they gave absolutely free to their salesmen and distributors a camera of the retail value of \$5; when in fact a camera was not given free, but salesmen were required to procure a sale of said plan and merchandise and to send in a picture of a retail merchant displaying advertising literature relative thereto in order to secure it, and its value was substantially less than the sum represented;
 - (d) Represented that merchants purchasing said sales plan and participating therein received from their customers \$5 worth of business at a cost of 1 cent only in that sets of silverware, for which customer paid 49 cents, cost merchant 50 cents; facts being merchants were charged \$4.95 for plan in question, which included cards, literature and two display sets