

IN THE MATTER OF
NATIONAL PRESS PHOTO BUREAU, INC., KAY HART
STUDIOS, INC., BOLIVAR STUDIOS, INC., AND SAMUEL
F. REESE AND CLARA L. REESE

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

Docket 3898. Complaint, Sept. 20, 1939—Decision, June 16, 1942

Where three corporations and two individuals, general officers of two of said concerns and in control of their activities and policies, the third having become inactive; engaged in interstate sale of photographs to members of the purchasing public—

In soliciting business under a plan by which their agents, supplied with a letter from a local newspaper—in consideration of furnishing the paper a glossy print of photographs taken in its community—introducing the agent as a photographer of the "National Press Photo Bureau" (one of corporate names employed), engaged in taking pictures of leading citizens for the paper's files—

- (a) Represented that the photograph was desired for their files or "photographic morgue" and for use by newspapers or other publications, and, following approval of proof by the subject, endeavored, with frequent success, to solicit purchase of one or more copies of the photograph selected; and
- (b) Represented, through use of words "National Press" as part of one of their corporate names and through their aforesaid practices, that they conducted a news or press photographic agency engaged in taking photographs intended for release to newspapers and other publications; when in fact they did not conduct such an agency, had no connection with any newspaper except as above set forth in regard to letters of introduction, but, as aforesaid, were engaged in selling photographs, and their said method was merely a scheme or device to secure sittings and sell photographs to prospective customers;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such representations were true, thereby causing it to purchase substantial quantities of photographs because of such mistaken belief:

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

Before *Mr. Lewis C. Russell* and *Mr. John J. Keenan*, trial examiners.

Mr. John M. Russell for the Commission.

Mr. Nat C. Helman, 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

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Trade Commission, having reason to believe that National Press Photo Bureau, Inc., a corporation, Kay Hart Studios, Inc., a corporation, Bolivar Studios, Inc., a corporation, Samuel F. Reese and Clara L. Reese, individually, and as officers of National Press Photo Bureau, Inc., a corporation, and Kay Hart Studios, Inc., a corporation, 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, National Press Photo Bureau, Inc., Kay Hart Studios, Inc., Bolivar Studios, Inc., are corporations, organized, existing, and doing business under and by virtue of the laws of the State of New York, having their offices and principal places of business at 509 Fifth Avenue, in the city of New York, in said State.

Samuel F. Reese, is president, and Clara L. Reese, is secretary-treasurer, of National Press Photo Bureau, Inc., and Kay Hart Studios, Inc., respectively, and are individuals, having their offices and principal places of business at 509 Fifth Avenue, in the city of New York, in said State, and they direct and control the sales activities and policies of all of said corporate respondents with respect to the acts and practices herein set forth. All of said respondents act in concert in doing the acts and things hereinafter alleged.

PAR. 2. The respondents are now and have been for more than 2 years last past engaged in the business of photographing persons, and in the sale and distribution of said photographs. Respondents sell said photographs to members of the purchasing public situated in various States of the United States and in the District of Columbia and cause the said photographs, when sold by them, to be transported from their aforesaid place of business in the State of New York to the purchasers thereof at their respective points of location in various States of the United States other than the State of New York and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in commerce in said photographs among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said business, and for the purpose of securing permission to take said photographs and of inducing the purchase thereof, respondents have caused false and misleading statements and representations with respect to the identity, nature, and character of their business to be disseminated among prospective purchasers of said photographs situated in various States of the United States and in the District of Columbia. Respondents or their agents call on prominent men situated in various States of

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the United States and in the District of Columbia, and display business cards bearing the statement, "National Press Photo Bureau, Inc., Purveyors of Photographs to Leading Trade, Financial and Professional Publications," letters of introduction, and letters transmitting proofs and invoices with similar representations therein, to prospects, stating they desire a photograph of such person for the press, that is, for newspapers, magazines, and other periodicals published throughout the United States, and for publication therein; that National Press Photo Bureau, Inc., is directly or indirectly connected with the leading newspapers of the United States; that National Press Photo Bureau, Inc. represents the local newspapers and has a following throughout the country; that prospects' pictures are wanted by the local and other newspapers; that respondents 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 National Press, which furnishes said photographs to the press and that National Press is likely to get calls for their pictures; and otherwise, directly or by implication, represent that they are representatives of or connected with one of the recognized news or photographic news services, desiring to procure photographs of such person for the purpose of publishing the same.

By means of the use of such statements and representations disseminated as aforesaid, the respondents or their agents procure permission from such persons to take their photographs. Respondents or their agents cause photographs of such persons to be taken and thereafter request such persons to select and approve one of the negatives, which respondents or their agents represent is to be released to the press. After such selection is made by the prospective purchasers, respondents, or their agents attempt to sell, and sell to such persons quantities of the finished photographs.

PAR. 4. The aforesaid statements and representations used and disseminated by the respondents in the manner above described are deceptive, false, misleading, and untrue. In truth and in fact none of the respondent corporations is a news or press photographic agency. None of the respondents nor their agents or representatives have any connection, direct or indirect, with any newspaper or other publication. The respondents do not take the photographs of the aforesaid members of the purchasing public for the purpose of distributing such photographs to newspapers or any other publication or for the press library of any of the corporate respondents, the respondents take such photographs for the purpose of selling the same to such members of the purchasing public. The said corporate respondents receive very few,

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if any, calls for any of their said photographs from newspapers or other publications, and none of them has or maintains a press library.

Through the use by the respondents of the name National Press Photo Bureau, Inc., respondents represent and imply, that the respondent, National Press Photo Bureau, Inc., was organized by, is a part of, or has some direct and substantial connection with the press of the United States to a Nation-wide extent, when in truth and in fact, said respondent, National Press Photo Bureau, Inc., was not organized by, is not a part of, and has no direct or indirect connection with the press of the United States to a Nation-wide extent, or any other extent, or on any other basis, except that occasional sales are made of photographs to individual publications.

PAR. 5. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations with respect to the identity, nature, and character of the business of the corporate respondents has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements and representations are true, and causes a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase substantial quantities of respondents' photographs.

PAR. 6. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice of the public and constitute 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 20, A. D., 1939, issued and thereafter served its complaint in this proceeding upon respondents, National Press Photo Bureau, Inc., a corporation; Kay Hart Studios, Inc., a corporation; Bolivar Studios, Inc., a corporation; and Samuel F. Reese and Clara L. Reese, individually, and as officers, of National Press Photo Bureau, Inc., a corporation, and Kay Hart Studios, Inc., a corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act.

After the issuance of the complaint and the filing of respondents' answer, testimony, and other evidence in support of the allegations of the complaint and in opposition thereto were introduced by attorneys for the Commission and for the respondents before duly appointed trial examiners of the Commission designated by it to serve in this pro-

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ceeding, and said testimony and other evidence were duly recorded and filed in the office of the Commission.

Thereafter the proceeding regularly came on for final hearing before the Commission on the complaint, the answer thereto, the testimony and other evidence, report of the trial examiners and exceptions thereto, briefs in support of and in opposition to the complaint, and oral argument by counsel for the Commission and counsel for respondents. 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. Respondents, National Press Photo Bureau, Inc., and Kay Hart Studios, Inc., are corporations, organized under the laws of the State of New York, with their offices and principal place of business at 509 Fifth Avenue, in the city and State of New York.

Respondent, Bolivar Studios, Inc., was a corporation organized under the laws of the State of New York, and until some time in the early part of the year 1939, when it ceased to function, its principal place of business was the same as that of the other respondents.

Respondents, Samuel F. Reese and Clara L. Reese, are respectively the president and the secretary and treasurer of respondents, National Press Photo Bureau, Inc., and Kay Hart Studios, Inc ; they direct and control the activities and policies of these corporations and act in concert with them in doing the acts and things hereinafter mentioned.

PAR. 2. The corporate respondents, National Press Photo Bureau, Inc., and Kay Hart Studios, Inc., are now, and for more than 2 years prior to the issuance of the complaint herein have been, engaged in the business of photographing prominent men and in selling and distributing such photographs.

Respondent, Bolivar Studios, Inc., was similarly engaged until the early part of the year 1939.

Respondents, during the periods mentioned, sold said photographs to members of the purchasing public and caused the same, when sold, to be transported from their place of business in the State of New York to the purchasers thereof located in various States of the United States. During all of the periods herein mentioned respondents maintained a course of trade in said photographs in commerce between and among the various States of the United States.

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PAR. 3. Respondents' agents, for the purpose of obtaining permission to take photographs and of inducing the purchase thereof, call upon prominent men throughout the United States and present a business card bearing the statement "National Press Photo Bureau, Inc., Purveyors of Photographs to Leading Trade, Financial and Professional Publications," and at the same time exhibit a letter of introduction obtained from a local newspaper in consideration of furnishing the paper a glossy print of photographs taken in its community. The following are typical of such letters:

ITEM * TRIBUNE

NEW ORLEANS

OCTOBER 28, 1936

To WHOM IT MAY CONCERN:

This will introduce Mr. Joseph, photographer for the Kay Hart Studios division of the National Press Photo Bureau, who has been taking pictures of our leading citizens for our press files.

It is understood that your sitting for this picture does not obligate either you or the Item-Tribune in any way.

The Item-Tribune will very much appreciate having your photograph made by Mr. Joseph for our files.

Yours cordially,

C. H. CAMPBELL,
City Editor.

To WHOM IT MAY CONCERN:

This will introduce Mr. Delacrioux, photographer of the National Press Photo Bureau, who is making pictures of a number of Wichita Falls citizens.

It is understood that your sitting for this picture does not obligate you or the Times Publishing Company in any way.

It is our intention to use the prints we will be furnished by the Bureau for our files, for use as the occasion may arise.

We will appreciate your sitting for Mr. Delacrioux.

TIMES PUBLISHING COMPANY.

The agent represents that the photograph is desired for the files or photographic "morgue" of one of the respondents and for use by newspapers or other publications. The person so contacted frequently sit for their photographs, the negatives of which, after they are taken by respondents' agents, are forwarded to respondents in New York, where they are developed and proofs are printed and transmitted to the agent, who delivers them to the respective subjects, with the request in each case that one be approved for use by the press. After the selection has been made by the subject, the agent solicits him to purchase one or more copies of the photograph selected, and in many cases such solicitation is successful.

PAR. 4. Respondents, by their acts and practices as set forth in paragraph 3 hereof, and by use of the words "National Press" as

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part of one of their corporate names, represent that they conduct a news or press photographic agency, engaged in the taking of photographs intended for release to newspapers or other publications, which representations are false and misleading. Respondents, in truth and, in fact, are not engaged in conducting a news or press photographic agency, nor have they any connection with any newspaper except, as hereinbefore stated, in regard to letters of introduction but, on the contrary, respondents are engaged in the business of selling photographs, and their method of doing business is merely a scheme or device for the purpose of securing sittings and selling photographs to prospective customers.

PAR. 5. The use by respondents of the foregoing false, deceptive, and misleading statements and representations has the capacity and tendency to mislead and deceive, and has mislead and deceived, a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and has caused a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase substantial quantities of respondents' photographs.

CONCLUSION

The aforesaid acts and practices of the respondents are to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices 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, the testimony, and other evidence in support of and in opposition to the allegations of the complaint taken before duly appointed trial examiners of the Commission designated by it to serve in this proceeding, the report of the trial examiners thereon and exceptions thereto, briefs in support of and in opposition to the allegations of the complaint, and oral argument of counsel. And the Commission having made its findings as to the facts and its conclusion that respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondents, National Press Photo Bureau, Inc., a corporation; Kay Hart Studios, Inc., a corporation, and Bolivar Studios, Inc., a corporation—their officers, directors, representatives,

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agents, and employees; and respondents, Samuel F. Reese and Clara L. Reese, individually, and as officers of corporate respondents, National Press Photo Bureau, Inc., and Kay Hart Studios, Inc., jointly or severally, directly or through any corporate or other device, in connection with the solicitation of permission to make photographs, or the offering for sale, sale, and distribution of photographs, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "National Press," or any other word or words of similar import or meaning, in the corporate name of respondent, National Press Photo Bureau, Inc., or as a part of any other trade or corporate name, to designate or describe a business which is principally for the purpose of making and selling photographs to the individuals photographed.

2. Representing or implying in any manner to a prospective customer, that respondents, or either of them, are news or press photographers, or that they conduct a news or press photographic agency; or that any photograph taken by them is for press or publicity purposes, unless such photograph is actually for immediate press or publicity use.

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

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IN THE MATTER OF

SIMON ARON, MORRIS ARON AND LOUIS BROUDO,
TRADING AS NOVELTY SALES COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4039. Complaint, Feb. 24, 1940—Decision, June 16, 1942*

Where three partners; engaged in competitive interstate sale and distribution of clocks, knives, flashlights, trays, jewelry, and other merchandise to dealers—

Sold and distributed assortments thereof which were so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when sold and distributed to the consumer, a typical assortment consisting of a number of articles of merchandise, together with a punchboard—in manufacture and sale of which two of the partners were also engaged—under a plan by which persons securing certain numbers for the 5 cents usually paid for a punch secured the articles, others receiving nothing; and thereby

Supplied to and placed in the hands of purchasers, who exposed their assortments to the purchasing public and distributed merchandise in accordance with plan described, a means of conducting games of chance, gift enterprises, or lotteries in the sale of said products in accordance with such plan;

With the result that many persons purchased said merchandise in preference to that offered by competitors who did not use similar sales methods, whereby competition was hindered and trade unfairly diverted from such competitors to them;

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and competitors, were contrary to the public policy of the United States Government, and constituted unfair methods of competition in commerce and unfair acts and practices therein.

Before *Mr. John W. Addison*, *Mr. Arthur F. Thomas*, and *Mr. Andrew B. Duvall*, trial examiners.

Mr. D. C. Daniel and *Mr. J. W. Brookfield, Jr.* for the Commission.

Mr. Arthur S. Salus and *Mr. David S. Molod*, of Philadelphia, Pa., 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 Simon Aron, Morris Aron, and Louis Broudo, individually and as copartners, trading under the name of Novelty Sales Co., have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in