

Syllabus

IN THE MATTER OF

BLANK & STOLLER CORPORATION, HARRY H. LONG,
GEORGE STOLLER, MAURICE SCHULTZ, AND RAN-
DOLPH FAJEN

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

Docket 4523. Complaint, June 24, 1941—Decision, June 16, 1942

Where a corporation previously engaged in making and selling photographs, in the course of which it acquired a large number of negatives, together with the three officers in control of its business activities and a fourth individual, engaged in making and selling photographic miniatures from said negatives; by means of circular letters to prospective purchasers, whose names and addresses they obtained from the corporate files along with corresponding negatives—

Represented that the miniatures they offered from negatives of photographs of the prospect had been displayed at public exhibition, were regularly or frequently sold for as much as \$75 or \$50, and that the quoted price of \$12.50 was greatly reduced and a special offer; and that such miniatures were prepared by a new and unusual method;

The facts being that while their place of business had a show case containing a number of miniatures—many of which had been rejected—which could be seen by persons entering, none of the miniatures had in fact been displayed in any public exhibition within the real meaning of the term; none of them had ever sold for any such amounts; quoted price was neither special nor reduced but the regular and customary one which they sought and which they even made no serious effort to maintain, selling at the best price obtainable and sometimes for as low as \$5; and methods used were not new or unusual, but commonly known and employed in the trade generally;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to said products, causing thereby its purchase thereof:

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

Before *Mr. John W. Addison*, trial examiner.

Mr. Donovan Divet for the Commission.

Mr. Joseph K. Guerin, Receiver, and *Mr. Emil Weitzner*, of New York City, for Blank and Stoller Corp.

Mr. Isidor Glasgal, of New York City, for George Stoller and Maurice Schultz.

Baer & Marks, of New York City, for Randolph Fajen.

Complaint

34 F. T. C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Blank & Stoller Corporation, a corporation, and Harry J. Long, George Stoller, Maurice Schultz, and Randolph Fajen, individually, and doing business as Blank & Stoller Studios, hereinafter designated and 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. The respondent, Blank & Stoller Corporation, is a corporation, organized and existing under and by virtue of the laws of the State of New York and having its office and principal place of business at 227 East Forty-fifth Street, New York, N. Y. The respondents Harry J. Long, George Stoller, and Maurice Schultz are, and at all times hereinafter mentioned, have been, officers of said Blank & Stoller Corporation in charge and control of its business and activities. The said respondents, Harry J. Long, George Stoller, and Maurice Schultz, and the respondent, Randolph Fajen, are individuals, and have at all times hereinafter mentioned done business at Blank & Stoller Studios with their office and principal place of business at 227 East Forty-fifth Street, New York, N. Y., said office and principal place of business being the same as that of respondent, Blank & Stoller Corporation.

PAR. 2. The respondents are now and for more than 1 year last past have been engaged in the production, sale, and distribution of photographic miniatures, sometimes known as gold-tone miniatures. The respondents sell, and at all times mentioned herein have sold, said product to members of the purchasing public situated in the various States of the United States and in the District of Columbia, causing said product when sold to be transported from their said place of business in the State of New York, or other point of origin of shipment, to purchasers thereof at their respective points of location in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said product in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. The respondents for more than 1 year last past have entered into and carried out various understandings, agreements, combina-

1403

Complaint

tions, and conspiracies for the purpose of selling said photographic miniatures to the purchasing public, and of obtaining photographs and negatives from which to produce said miniatures, by the use of false, misleading, and deceptive representations concerning said product, and concerning the purpose for which certain photographs and negatives were obtained as hereinafter alleged.

PAR. 4. Pursuant to said understandings, agreements, combinations, and conspiracies, and in furtherance thereof the respondents for more than 1 year last past, acting in concert and cooperation with each other, for the purpose of promoting the sale of said product, and for the purpose of obtaining certain photographs from which to produce some of said miniatures, have engaged in the practice of making false representations as to the merits of their said miniatures, and as to the purposes for which certain photographs and negatives were desired as hereinafter alleged. Said false representations are and have been made by means of letters and other printed and written matter distributed among customers and prospective customers, and by oral statements made to customers and prospective customers.

PAR. 5. Among the false and misleading representations so made and distributed concerning respondents' said product, and in furtherance of said understandings, agreements, combinations, and conspiracies are the following:

Recently we made a goldtone miniature from one of your negatives for display at an exhibition of miniatures, as we considered it admirably adapted for the purpose.

The Exhibition has been concluded and we are taking this occasion to offer you the opportunity of acquiring for yourself this fine reproduction at the greatly reduced price of \$12.50. Our regular price is \$75.00.

Recently we took occasion to offer you a very fine miniature of yourself which we have on hand. Our special offer to you of \$12.50 for the miniature was a fraction of our regular price for this type of work.

The miniatures are selling for as high as \$50.00, according to the type of workmanship. However, due to our new method of preparation, we are able to furnish a goldtone miniature for you, that will be as fine in every respect as the miniatures selling for higher prices.

By the use of said representations and others of similar import and meaning not herein specifically set forth, the respondents have represented and do represent that said miniatures so offered for sale have been displayed at a legitimate exhibition of the kind ordinarily conducted by photographers to which the public was invited and which were largely attended; that the sum of \$12.50 is a greatly reduced price for said miniatures, and constitutes a special offer; that the regular price at which respondents sell said miniatures is in some instances

Complaint

34 F. T. C.

\$75, and in other instances \$50; and that said miniatures are prepared by a new and novel method heretofore unknown to persons engaged in the production of similar miniatures.

PAR. 6. The aforesaid representations are false and misleading. In truth and in fact said miniatures are not and have not been displayed at a legitimate exhibition of the kind ordinarily conducted by photographers to which the public was invited and which were largely attended, or at any other exhibition; the sum of \$12.50 is not a reduced price for said miniatures, but is the price at which they are usually offered for sale by said respondents, and does not constitute a special offer; the regular price at which said miniatures are sold is not \$50 or \$75 or any sum approaching either of these amounts; said miniatures are not prepared by a new or novel method heretofore unknown to persons engaged in the business of producing miniatures.

PAR. 7. Many of the miniatures sold by respondents, as heretofore alleged, have been made from photographs or negatives supplied by the respondent, Blank & Stoller Corporation. In order to obtain additional and other photographs and negatives from which to produce miniatures, respondents in the course and conduct of their said business and in furtherance of said understandings, agreements, combinations, and conspiracies have falsely represented to numerous members of the purchasing public located in the various States of the United States and in the District of Columbia that they were connected with one or more newspapers or press associations, and were desirous of taking photographs of said members of the purchasing public for use by said newspapers or press associations at some future date. In truth and in fact none of said respondents is, or at any time herein mentioned has been, in any way connected with any newspaper or press association, and said photographs and negatives were in fact wanted only for the purposes of preparing miniatures to be offered for sale to the various persons to whom said representations were made.

PAR. 8. The use by the respondents of the aforesaid acts, practices, and methods has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations are true, and into the purchase of substantial quantities of respondents' said product.

PAR. 9. The aforesaid methods and practices of the respondents, including said understandings, agreements, combinations, and conspiracies, and the things done thereunder and pursuant thereto and in furtherance thereof, as hereinabove alleged, are all to the prejudice and injury 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 June 24, 1941, issued and subsequently served its complaint in this proceeding upon the respondents, Blank & Stoller Corporation, a corporation, and Harry H. Long (referred to in the complaint as Harry J. Long), George Stoller, Maurice Schultz, and Randolph Fajen, individually, and doing business as Blank & Stoller Studios, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the filing of answers by the respondents (except respondent, Stoller, who filed no answer), testimony and other evidence in support of the allegations of the complaint were introduced by attorney for the Commission, and in opposition thereto by the attorneys for certain of the respondents, before John W. Addison, a trial examiner of the Commission theretofore duly designated by it, and such 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 answers of the respondents, testimony, and other evidence, report of the trial examiner upon the evidence and the exceptions to such report, and briefs in support of and in opposition to the complaint (oral argument not having been requested), and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Blank & Stoller Corporation, is a corporation, organized and existing under and by virtue of the laws of the State of New Jersey, its office and principal place of business having formerly been located at 227 East Forty-fifth Street, New York, N. Y. While the corporation has not been dissolved, it has been adjudicated a bankrupt and is no longer engaged in business operations.

Respondents, Harry H. Long, George Stoller, and Maurice Schultz, are officers of the corporate respondent, and at all times referred to herein, were in full charge of its business activities. They formulated the policies and directed and controlled all of the acts and practices of the corporation. The present address of respondent, Long, is 33 West Forty-second Street, New York, N. Y., that of respondent, Schultz, is 91 East Fifty-ninth Street, New York, N. Y., and the last

known address of respondent, Stoller, is 227 East Forty-fifth Street, New York, N. Y.

The present address of respondent, Fajen, is 45 West Fifty-seventh Street, New York, N. Y.

PAR. 2. During the period of its active business operations respondent, Blank & Stoller Corporation, was engaged in the business of making and selling photographs, and in the course of its operations it acquired a large number of photograph negatives. In March 1940, an agreement was entered into among all of the respondents herein under which the respondents engaged in the joint business of making and selling photographic miniatures, sometimes referred to as gold-tone miniatures. The miniatures were made from the negatives in the files of the Blank & Stoller Corporation. This business, which was operated under the name of Blank & Stoller Studios, was continued by all of the respondents until about April 1, 1941. At that time a controversy arose between respondent, Fajen, and the other respondents, and Fajen severed his connection with the business. The other respondents continued to operate the business for some 2 months thereafter, when it was discontinued entirely. The corporation was adjudicated a bankrupt on August 14, 1941.

PAR. 3. In the course and conduct of their business the respondents sold their miniatures to numerous members of the purchasing public situated throughout the United States, and caused the miniatures, when sold, to be transported from respondents' place of business in the State of New York to the purchasers thereof at their respective points of location in various other States of the United States and in the District of Columbia. Respondents maintained a course of trade in their products in commerce among and between the several States of the United States and in the District of Columbia.

PAR. 4. In promoting the sale of their miniatures the respondents addressed numerous circular letters to prospective purchasers, the names and addresses of such persons being obtained from the files of the corporation, along with the corresponding negatives. One form of letter in common use by the respondents read in part as follows:

You will probably recollect that a few years ago we finished some very fine photographs of you.

Recently we made a goldtone miniature from one of your negatives for display at an exhibition of miniatures, as we considered it admirably adapted for the purpose.

The exhibition has been concluded and we are taking this occasion to offer you the opportunity of acquiring for yourself this fine reproduction at the greatly reduced price of \$12.50. Our regular price is \$75.00.

If no response was received to this letter, a second letter was usually addressed to the prospect which read in part as follows:

Recently we took occasion to offer you a very fine miniature of yourself which we have on hand from our recent exhibition of miniatures. Our special offer to you of \$12.50 for the miniature was a fraction of our regular price for this type of work.

Inasmuch as we have no further exhibitions planned at this time, we believe the miniature would be of far greater value to you, than to us. Accordingly, we are bringing the matter to your attention once more.

Another letter used by respondents read in part as follows:

Have you any of our photographs that we made of you? If not, perhaps you will recall that we made some large portraits for you some time ago?

Many of our customers have found that besides a large portrait, they would like to have a miniature. Something compact to have on a desk or dressing table, perhaps a gift to their children or relatives. They wanted something that would look expensive yet would not cost too much. We experimented with a few miniatures and our best to date is our goldtone miniature.

Your negative is very adaptable and would make a beautiful goldtone miniature. These miniatures are selling for as high as \$50,000, according to the type of workmanship. However, due to our new method of preparation, we are able to finish a goldtone miniature for you for \$12.50, that will be as fine in every respect as the miniatures selling for higher prices.

PAR. 5. Through the use of these representations and others of a similar nature, the respondents represented to prospective purchasers that the miniatures offered for sale had been displayed at public exhibitions; that the miniatures regularly or frequently sold for prices as high as \$75 and \$50, and that the quoted price of \$12.50 was a greatly reduced price and constituted a special offer; and that the miniatures were prepared by a new and unusual method theretofore unknown to persons engaged in the production of miniatures.

PAR. 6. The evidence shows and the Commission finds that none of the miniatures offered for sale by respondents had in fact been displayed at any public exhibition. There was in respondents' place of business a showcase containing a number of miniatures, many of which had been rejected by purchasers, and these miniatures could be seen by persons entering respondents' place of business, but there had never been any exhibition of any of the miniatures within the real meaning of the term. None of respondents' miniatures had ever sold for \$75 or \$50, or for any amount approaching such figures. The quoted price of \$12.50 was in no sense a special or reduced price and did not constitute a special offer, but was the regular and customary price sought by respondents for the miniatures. In fact, respondents made no serious effort to maintain even the price of

Order

34 F. T. C.

\$12.50 but sold the miniatures at the best price obtainable, sometimes as low as \$5. The method used in the preparation of the miniatures was in no sense new or unusual but was a method commonly known and used in the trade generally.

The Commission therefore finds that the representations made by the respondents were false, misleading, and deceptive.

PAR. 7. The Commission further finds that the use by the respondents of these false, misleading, and deceptive representations had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the qualities, characteristics, and value of respondents' products, and the tendency and capacity to cause such portion of the public to purchase respondents' products as a result of the erroneous and mistaken beliefs so engendered.

CONCLUSION

The acts and practices of the respondents as herein found 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of certain of the respondents, testimony, and other evidence taken before John W. Addison, a trial examiner of the Commission theretofore duly designated by it, in support of the allegations of the complaint and in opposition thereto, report of the trial examiner upon the evidence and the exceptions to such report, and briefs in support of and in opposition to the complaint (oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Blank & Stoller Corporation, a corporation, its officers, and Harry H. Long, George Stoller, Maurice Schultz, and Randolph Fajen, individually, and doing business as Blank & Stoller Studios, or doing business under any other name, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of respondents' miniatures in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1403

Order

1. Representing that respondents' miniatures have been displayed at public exhibitions.

2. Representing that respondents' miniatures have ever sold for \$75 or \$50, or for any amount in excess of that for which such miniatures have actually been sold by respondents.

3. Representing as the customary or regular price of respondents' miniatures, any price which is in excess of the price at which such miniatures have been customarily or regularly sold by respondents in the usual course of business.

4. Representing that the price at which respondents' miniatures are offered for sale constitutes a special or reduced price, when in fact such price is the usual or customary price at which such miniatures are offered for sale by respondents in the usual course of business.

5. Representing that respondents' miniatures are prepared by a new or unusual method.

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.

IN THE MATTER OF
**LINCOLN ACADEMY, INC., ALSO TRADING AS PREPAR-
ATORY SERVICE BUREAU, ET AL.**

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

Docket 4703. Complaint, Feb. 5, 1942—Decision, June 16, 1942

Where a corporation and two individuals who were president and secretary thereof and controlled its activities, engaged in the interstate sale and distribution, through their agents, of correspondence courses intended to prepare students for civil service positions—

- (a) Represented that said corporation was an agency or representative of, or connected with, the United States Government or Civil Service Commission, and that a Government job was assured or guaranteed to students taking the courses offered; the facts being that neither such agents nor aforesaid individuals had any such connection and could not thus guarantee such jobs;
- (b) Represented that civil service examinations would be held at definite times and places or within a specified time at or near the home of the prospective student, and that their students would be notified of the time and place and would not be required to leave their homes in order to obtain Government jobs; the facts being neither they or anyone connected with the school had any advance knowledge of such examinations or any information to enable them to say that students would not be required to leave their homes to obtain such jobs;
- (c) Represented that the number of students who were permitted to take their courses was limited, as was the number enrolled in a certain locality and the time within which they might enroll; when in fact there were no such limitations;
- (d) Falsely represented that prospective students had been appointed to civil service jobs, that unpaid balances due on tuition at time of students' appointments to Government positions would be deducted from their pay checks by the Government; and that cards of inquiry signed by prospective students had been returned from Washington, and that such students had been selected by the Government for employment; and
- (e) Made use of words "Service Bureau" as a part of their corporate or trade name, thereby creating an erroneous impression of Government connection, and encouraging misrepresentations by their salesmen as aforesaid;

With effect of misleading and deceiving members of the public into the mistaken belief that the aforesaid representations were true, and thereby inducing them to purchase substantial quantities of said courses:

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 in commerce.

Mr. S. F. Rose for the Commission.

Mr. William Furst, of Newark, N. J., for respondents.