

Syllabus

IN THE MATTER OF
SUCCESS PORTRAIT COMPANY, ETC., 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 4522. Complaint, Mar. 31, 1942.¹—Decision, Aug. 3, 1942*

A drawing is a representation produced by the art of drawing, a work of art produced by pen, pencil, or crayon; a crayon drawing is the act or art of drawing with crayons; the pastel, in art, is a colored crayon made of pigments ground with chalk and compounded with water into a paste; and a drawing made with colored chalk or crayon is called a pastel, as is also the art of drawing with colored crayons.

A painting is understood by artists who paint pictures, photographers who color photographs, and the general public, as an original representation by the painter of a design, image, or object on a surface by means of paints, water color, or oil; a freehand image painted directly on the surface without the intervention of any mechanical means, such as a camera; a water color is a painting with pigments for which water is used as a solvent; and an oil painting is a painting done by hand with brushes in plastic oil colors on canvas, or other materials, without the aid of photography.

Where a corporation, engaged in producing and in selling and distributing colored or tinted enlargements and miniatures of photographs and snapshots, and frames therefor; the officers and directors thereof, who exercised a substantial measure of control over the other associates as hereafter set out; some fifteen "operators" who cooperated with said corporation in the sale and distribution of said products, employing numerous persons in various capacities such as "crew managers", "sales agents", "record managers", "proof passers", "field artists" and "delivery men" to contact the purchasing public; and some 30 "sales agents" of one or more of said "operators", who visited homes in cities, towns, and rural communities of other States, carrying purported typical samples and soliciting orders;

In carrying on the competitive sale of said products under a sales plan in which all cooperated and under which said corporation (1) furnished to said "operators" and "sales agents", upon their order, as well as to prospective agents, equipment including catalogs, order blanks, daily report forms, receipts, and, in many instances, sample cases; (2) caused orders or contracts for its products to be entered on printed forms provided by it, which contained, in some cases, its own corporate name and address as well as the name or trade name of the "operator" through whom the order was secured, and, in other instances, only the trade name of the operator, using the corporation's address, and also stated, in some cases, that the "operator" was "affiliated" with or a "subsidiary" of said corporation; (3) furnished "operators" and "sales agents", if desired, with identification and credential certificates and letters; (4) was in possession at all times of the names and addresses of customers whose pictures it was making; (5) when so

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requested, handled the mail from customers of "operators" and "sales agents," which was addressed to many of them at said corporation's own address; (6) paid visits to various "operator" organizations, instructing them regarding sales technique and the obtaining and improving of business; (7) required daily reports from salesmen in the field covering the canvassing of customers, proof passing, and the delivery of products; and (8) on occasion wrote types of sales talks deemed appropriate for use by "sales agents" or "operators," conferred with latter regarding trade names to be employed by them and contract forms to be used; and handled post office money orders payable to various trade name companies sent in by the "operators," making use thereof, and also open accounts and financial transactions for such "operators," maintaining close supervision over their business affairs and those of the "sales agents," and on occasion urging the discharge of the latter—

- (a) Made use in order blanks and contracts and otherwise of such terms as "Hand Painted Portrait" in soliciting orders for and designating and referring to its aforesaid tinted or colored enlargements or miniatures;

Notwithstanding the fact said products were not paintings as understood by the general public as being free-hand images painted in water colors or oil without the intervention of any mechanical means, but were accomplished through spraying powdered pigment in solution upon the photographic reproduction through use of a mechanical air brush and a camel's hair brush; and

Where said "operators," selling and distributing said colored enlargements, miniatures, and frames, under the aforesaid general plan and program—

- (b) Made use of such trade names as "Old Master Portrait Company," "Superior Art Studios," "Colonial Air Institute," and numerous others, along with words, in some instances, "subsidiary of" or "affiliated with," followed by name of said corporation; and employed therewith as the address that of said corporation;

Notwithstanding the fact that with the exception of one or two, none of them had owned, operated or conducted, directly or indirectly, any "art studio," "institute of art," or place of business at Chattanooga or elsewhere, or the equipment essential in producing photographic enlargements or miniatures, or employed or controlled artists or operators skilled in the use of air or paint brush, or in drawing or pastel, or maintained an office or office force at address in question, with the exception of two who employed a secretary and conducted correspondence therefrom; said trade names were used merely to promote the sale of products actually produced by such corporation; and in no instance was operator a business "subsidiary" or "affiliate" thereof, but said terms were employed to induce customers to believe they were dealing with an operating established house, and served to refer customers to corporation in question for a financial rating of the trade-name company and the operator using it;

With result that prospective purchasers were led to believe that they were dealing with representatives of sales studios or associations or art institutes, and thereby confusing the businesses conducted by said "operators" with genuine art associations, art studios, or art institutes, and with further result that liability to purchasers for the representations, acts and practices of "operators" and "sales agents" was evaded, and business rating, credit, prestige, and standing to which they were not entitled were given to the trade names employing the same business address as that of afore-

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said corporation, and particularly to those which were represented as its subsidiaries or affiliates; and

Where "sales agents" visiting homes and carrying with them samples which had been reproduced and built up from carefully selected subjects of highest photographic value, the colored enlargements of which had been skillfully done with great care and detail and resembled closely, in many cases, paintings done by hand;

(c) Represented that the company which the particular agent represented was prepared to duplicate or reproduce such type of work and that the "studio's" or "art institute's artist" would "paint" or "make a painting" or "hand painted portrait" or "hand painted stream-lined portrait" of the picture or snapshot of some member of the customer's family, and that an "oil painting" would be made to be finished in oil by hand on linen, silk or Japanese silk, the agent referring from time to time to the "portrait painting" as being made by the trade-name company which he represented, and address of which was the same as that of aforesaid corporation;

The facts being that corporation in question in various instances, due to being furnished with photographs or snapshots of inferior quality, incapable of producing good enlargements, was unable to produce finished products equal in appearance to the samples displayed; customers complained that the "paintings" or "pictures" made for them were inferior to the samples; and, as aforesaid, they were not paintings or finished in oil by hand on linen, silk, or Japanese silk;

(d) Falsely represented at times that an art studio or academy of art was being maintained in which art classes were being held, and that if the prospective purchaser would lend to the agent a photograph or snapshot, it would be copied by hand in oil colors by an art student attending such classes; and

(e) Falsely represented in many instances that the sale was an "introductory offer" only; that only a limited number of paintings was to be placed in any given town or locality, that the customer would pay only for the work done by the artist, the picture to cost nothing; that the "painting" was being offered at a reduced price and, that, in consideration of such fact, it was expressly agreed that it was to be "protected and exhibited"; and in other instances designated the price named as an "advertising price" or represented that the picture was being offered merely at the "cost of production"; and

Where some of said "operators" and "sales agents"—

(f) Represented to customers and prospective customers that a drawing contest would be held in a certain community for the purpose of deciding who should be one of the few "lucky persons" to have "paintings" placed on exhibition in their homes in connection with a "special advertising offer" or "special introductory offer," and represented that the sealed envelope produced in said connection by the "sales agent" contained various slips of paper, most of which were blank, but a few of which were certificates or coupons entitling the holder to two genuine hand-painted portraits finished in oil for the sum of \$10 or one for \$7.50—or at various times at different prices under which the "lucky" drawer got a picture for half price or two for the price of one;

The facts being that the slips were so manipulated that all acceptable customers invariably drew a "lucky" coupon; the alleged contest was a deceptive scheme, the sole purpose and result of which were to induce prospective purchasers to believe that if they were lucky they would obtain pictures at

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prices greatly below those which other customers had to pay and were thus induced to enter into contracts for purchase in which the coupon gave them no advantage whatsoever; and

Where a second sales agent, designated as "field artist" or "instructing artist," following the transmission of an order by the first salesman, upon his appearance with an uncolored rough proof or "sketch" of the enlarged photograph, for which he collected the agreed cost—

- (g) Informed the customer for the first time that a frame for the picture, which was finished in octagonal shape, could not be purchased from any source other than through his company and that the portrait would not hold its color and be of any value unless framed, calling the customer's attention from time to time to his agreement to "protect" and "exhibit" the portrait and to his "obligation" under the contract to buy a frame, which in various instances had not been mentioned before, and, in the event of the customer's refusing to buy a frame, repeated through a third agent aforesaid reasons why a frame must be bought, and in some instances refused to deliver the completed picture regardless of whether or not it had been paid for in full, and refused to return the original photograph loaned by customer until the frame was ordered;

The facts being that said sales agent represented as a "field artist" or "instructing artist" was merely a delivery man or frame salesman; and "operators" in many instances concealed from purchasers at time of order the fact that finished product would be delivered in a frame of peculiar octagonal convex shape, and that it would be impossible to obtain a frame to fit said picture except from or through said corporation or others at prices fixed by them; their efforts were directed largely to the sale of frames, and their sales plan, and the various calls of the sales agents, were primarily for the purpose and with the effect of forcing the customer to buy something he did not originally intend to buy; and

- (h) Represented as regular price or value for frames, prices, and values which were in fact substantially in excess of those at which frames of similar type and quality are usually sold;

With the result that the use of said typical representations, acts, and practices, employed as aforesaid, led purchasers mistakenly to believe that said representations and implications were true, and caused a substantial number to buy substantial quantities of their said products:

Held, That such acts and practices, as above set forth and effected through the use of a sales plan in which said corporation and others cooperated, as aforesaid, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

Mr. Marshall Morgan for the Commission.

Whitaker, Hall, Haynes & Allison, of Chattanooga, Tenn., for the corporate respondent and the officers and directors thereof.

Mr. Frank J. Wideman, of Washington, D. C., for the individual operators and salesmen.

AMENDED 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 the parties named in the caption hereof, and more particularly 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. Respondent, Success Portrait Co. (hereinafter referred to as corporate respondent), is a corporation organized and doing business under and by virtue of the laws of the State of Tennessee. Said corporate respondent also trades as Chattanooga Art Medallion Co. and as Art Trade Studios.

Respondent, James Morton McConnell, is president and a director of corporate respondent, Success Portrait Co.

Respondent, Ozro Absolem Brammer, is vice president and a director of said corporate respondent, Success Portrait Co.

Respondent, George Nathan McConnell, is secretary and a director of said corporate respondent, Success Portrait Co.

Respondent, Jesse Roy Hodge, is treasurer and a director of said corporate respondent, Success Portrait Co.

The above individual respondents have their principal offices and place of business with corporate respondent at 1301 McCallie Avenue in the city of Chattanooga, State of Tennessee, and they direct and control the business policies and activities of said corporate respondent in carrying out the acts and practices hereinafter alleged.

Respondents, W. S. Edwards and Ida Lillian Wilson Edwards, are individuals, trading as Superior Art Studios and as Colonial Art Institute and as Old English Art Co., and as such, are associated with and are representatives of said corporate respondent, Success Portrait Co.

Respondent, Jack E. Bramley, is an individual, trading as Streamline Art Co. His address is box 242, Little River Station, Miami, Fla., and he is associated with and a representative of said corporate respondent.

Respondent, C. A. Hicks, is an individual, trading as H. B. Art Co. His address is San Antonio, Tex., and he is associated with and a representative of said corporate respondent.

Respondent, N. W. Frazier, is an individual, trading as Federal Art Co. His address is box 720, Tarboro, N. C., and he is associated with and a representative of said corporate respondent.

Respondent, J. E. Woods, is an individual, trading as Paramount Art Co. His address is route 1, Shelby, N. C., and he is associated with and a representative of said corporate respondent.

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Respondent, J. P. Kennington, is an individual, trading as Kennington Art Studio. His address is Kershaw, S. C., and he is associated with and a representative of said corporate respondent.

Respondent, S. C. Porter, is an individual, trading as Peerless Studio. His address is Corpus Christi, Tex., and he is associated with and a representative of said corporate respondent.

Respondent, R. H. Page, is an individual, trading as Page Art Co. His address is 135 West Second Street, Washington, N. C., and he is associated with and a representative of said corporate respondent.

Respondent, S. P. Rogers, is an individual, trading as Rogers Art Co. His address is Union, S. C., and he is associated with and a representative of said corporate respondent.

Respondents, H. F. Wilson and Jack Howard, are individuals, and their addresses are Grenada, Miss., and Fair Mount, Ga., respectively. Said respondents are associated with one another and are trading as Wilson Portrait Co. and as Wilson Art Association, and they are associated with and representatives of said corporate respondent, Success Portrait Co.

Respondent, T. F. Keegan, is an individual, trading as World Art Co. His address is Vero Beach, Fla., and he is associated with and a representative of said corporate respondent.

Respondent, R. L. Gaddis, is an individual, trading as Artcraft Portrait Co. His address is Bartow, Fla., and he is associated with and a representative of said corporate respondent.

Respondent, E. T. Greenwood, is an individual, trading as Vogue Art Studio. His address is Paces, Va., and he is associated with and a representative of said corporate respondent.

The above-named respondents, W. S. Edwards, Ida Lillian Wilson Edwards, Jack E. Bramley, C. A. Hicks, N. W. Frazier, J. E. Woods, J. P. Kennington, S. C. Porter, R. H. Page, S. P. Rogers, H. F. Wilson, Jack Howard, T. F. Keegan, R. L. Gaddis, and E. T. Greenwood are hereinafter on occasion referred to as respondent representatives.

Respondents, Neal Allen, Ruth Attix, Henry Acie Barrentine, Lee Beaver, Tom Bell, Earl Bigby, H. P. Bingham, R. S. Bishop, James W. Boulware, Ted Bramley, Catherine Broward, N. B. Broward, Lloyd Brown, H. V. Caton, L. Clark, O. D. Clayton, Robert Dodd, George F. Donehue, Joseph Durrance, Edith Edmondson, Jack Edwards, Willis G. Edwards, J. F. Evans, Thos. Gaddis, V. Gantt, Jimmy Greenwood, Juanita Holland, R. F. Jones, A. S. King, L. H. Marsden, Thelmar Marshall, J. H. McCoy, F. H. McGaughey, H. D. McGaughey, Elizabeth Melvin, O. R. Melvin, Carl Newton, Grayce Nix, J. W. Parker, Letha Revels Putney, Jack Ritchie, T. E. Savage, Mary Schultz, Lillian Shepard, G. C. Sours, R. C. Speece, Marshall Steadham, John G.

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Tierney, Stella Timmerman, C. J. Wallentelsz, Kay Harriet Whitten, O. A. Willocks and Chester Wofford, are individuals and are sales agents and employees of one or more of the respondents hereinbefore named and described. Said respondents are hereinafter on occasion referred to as respondent sales agents.

All of said individual respondents maintain their principal office and place of business at 1301 McCallie Avenue, Chattanooga, Tenn.

All of the respondents are engaged in the sale and distribution of tinted or colored enlargements, or tinted or colored miniatures, of photographs and snapshots and frames therefor. Respondents cause and at all times mentioned herein have caused said products, when sold, to be transported from the State of Tennessee to the purchasers thereof located 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 said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of said business, respondents have been, and are now engaged in direct and substantial competition with various corporations, partnerships and individuals likewise engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia of tinted or colored enlargements and tinted or colored miniatures of photographs and snapshots and frames therefor.

PAR. 3. Respondents, during the 3 years or more last past, have entered into and carried out various understandings, agreements, combinations and conspiracies with each other to sell tinted or colored enlargements and tinted or colored miniatures of photographs and snapshots and frames therefor to the purchasing public through the use of false, misleading, and deceptive acts, practices, and methods.

PAR. 4. In the course and conduct of said enterprise, said corporate respondent is engaged in the business of producing and distributing colored or tinted enlargements and miniatures of photographs and snapshots and the sale of frames therefor, and in the sale and distribution thereof the officers and directors of said corporate respondent, in their individual and respective official capacities, dominate, direct, and control the corporate policies, affairs, and activities of said corporate respondent and exercise a substantial measure of direction and control over the organization, management, policies, operation, and financing of the remaining respondents herein in carrying out the unfair methods of competition and unfair and deceptive acts and practices herein alleged.

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Associated with said corporate respondent are various operators, associates, or representatives who, through the medium of various and sundry trade names, offer for sale, sell and distribute corporate respondent's products to the consuming public. Respondent representatives are such operators, associates, or representatives of said corporate respondent.

The respondent representatives employ numerous persons in various capacities, such as "crew managers," "road managers," "proof passers," "delivery men," and salesmen or sales agents, who contact the purchasing public in the sale, distribution and delivery of the products produced by the corporate respondent and sold and distributed by the corporate respondent and the respondent representatives. Respondent sales agents are connected with the respondent representatives in some capacity in connection with the sale and distribution of said corporate respondent's products.

PAR. 5. Pursuant to said understandings, agreements, combinations, and conspiracies and in furtherance thereof, said respondents, acting in concert and cooperation with each other and with divers other persons whose names are to the Commission unknown, have engaged in various unfair and deceptive acts and practices in commerce and various unfair methods of competition in commerce, of which the following are typical:

1. In buying respondents' products, purchasers and prospective purchasers are led to believe by respondent representatives and respondent sales agents that they are contracting or dealing with duly constituted representatives or sales agents of existing studios or art companies whose names appear on the various contract forms, order blanks, or identification certificates produced by said representatives or sales agents in contacting said purchasers.

In truth and in fact, the names of such studios or art companies are wholly fictitious in that there are no such studios or art companies in existence, but to the contrary these are merely trade names used by the various respondent representatives engaged in the sale of products produced and distributed by Success Portrait Co. These various contract forms, order blanks, and identification certificates give the street address of Success Portrait Co. as their own. Respondent representatives and respondent sales agents do not in any way operate art companies, art associations, or studios, nor do they in any manner engage in the business of making, enlarging, or the tinting of photographs. The Success Portrait Co.'s products are sold by such agents, representatives and canvassers operating under various fictitious names, thereby misleading the public as to the real name of the manufacturer of the product. Respondent representatives and respondent's sales

agents are furnished with identification certificates and credentials which are purportedly signed by one of the fictitious studios or art companies. These are exhibited by respondent representatives and respondent sales agents when interviewing various prospective purchasers. On occasion also respondent representatives and respondent sales agents are furnished with identification certificates and credentials signed by corporate respondent Success Portrait Co., which are exhibited by them when interviewing various prospective purchasers.

Equipment, including catalogs, order blanks, daily report forms, receipts, and, in many instances, sample cases enclosing samples of corporate respondent's products, is furnished by corporate respondent to said respondent representatives and respondent sales agents. The corporate respondent, in many instances, causes orders or contracts for its products to be entered on printed forms provided by it for that purpose. These order blanks or contracts contain corporate respondent's name and address, as well as the name or trade name of the respondent representative through whom the order is secured. In such order blanks it is variously stated that said respondent representative is affiliated with or is a subsidiary of said corporate respondent. When an order is secured, said order blanks or contracts are signed by the respondent representative securing the order as "representative" or "company representative" on a line provided therefor.

Typical of the form of order blank or contract used by the respondents under the trade names mentioned herein, and under various other trade names to the Commission unknown, is the following:

SUPERIOR ART STUDIOS

Subsidiary of Success Portrait Company

Home Office, 1301 McCallie Ave.

CHATTANOOGA, TENN.

Sketching and Portrait Painting

THIS CERTIFICATE entitles the holder to one HAND-PAINTED STREAM-LINE PORTRAIT, size 9 x 14, for the producing cost of \$2.98 *unframed*.

To introduce this grade of art, we are placing only a limited number under this offer. You will be notified by mail when proof of your portrait is ready. It will then be shown at your residence when the \$2.98 *must be paid*.

In consideration of the reduced price at which this portrait is placed, it is expressly agreed that it shall be properly protected and *exhibited*.

Verbal agreements, other than herein stated, will not be recognized.

We guarantee the return of your photograph with the finished work.

COUNTERMANDS NOT RECOGNIZED

PAY THE MAN WHO SHOWS THE PROOF

Date_____ Representative_____

The foregoing business arrangement is used by the respondents for the purpose of evading liability to purchasers for various false and misleading statements and representations which are made in the sale of respondents' products and to give prestige to the various trade names used by respondent representatives and respondent sales agents. The so-called "paintings," "hand-painted portraits," "polychrome portraits," "streamline portraits," or "miniatures" produced, sold and distributed by respondents are not portraits, miniatures, or paintings finished or produced by hand in oil colors in any sense of the word, but, to the contrary, are merely cheap, quickly made photographic reproductions costing in the neighborhood of \$1.25 each, which are tinted or colored by the use of pastel or crayon, water color or other powdered pigments soluble in water, sprayed upon the photographic reproduction in solution largely through the use of a mechanical air brush and compressed air.

2. Respondents exhibit to purchasers and prospective purchasers samples of attractively colored and finished specimens of the purported type of work to be done. Prospective purchasers are told that they may buy similar "paintings" or "portraits" from respondents at a "reduced price," "advertising price," "special introductory price," or for the "cost of production."

In truth and in fact, the so-called portraits or tinted photographic reproductions produced, sold and distributed by respondents are different from and greatly inferior in quality, workmanship, and appearance to the samples exhibited by respondents when obtaining orders for such products. In truth and in fact, such products are not sold at a "reduced price," "advertising price," "special introductory price," or for the "cost of production" but, to the contrary, the price at which respondents sell unframed tinted photographic reproductions is in excess of and above the regular and customary price for which said products usually and customarily sell in the ordinary course of business.

3. Said respondents in some instances induce the customer to lend them a photograph or kodak snapshot of the party or parties whose portrait is to be "painted" and represent that such photograph is to be used as a model or guide to the artist who is to "paint" the "portrait" and that said photograph will be returned to the purchaser with the completed work. In some instances, respondents represent that they maintain an "art institute," "art studio," or "academy of art" in which art classes are held for the purpose of giving experience to young artists and that respondents desire to obtain various photographs from which hand-painted portraits or hand-painted miniatures are to be copied and, further, that if the prospective purchaser will

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loan to the respondents a photograph or snapshot it will be copied by hand in oil colors by an art student attending such classes. Respondents further represent to the prospective purchaser that the so-called "portrait" or "oil painting" will be finished in oil by hand on linen, silk, or "Japanese" silk.

In truth and in fact, corporate respondent, Success Portrait Co., is not and never has been an art association, art studio, art institute, or academy of art, and such institutions are not now, and have not been during the times mentioned herein, owned or operated by any of the respondents herein. On the contrary, the business conducted by respondents in the production, distribution and sale of said portraits and frames is and has been nothing more, in fact, than a commercial business enterprise selling to the purchasing public for profit cheap colored or tinted photographic enlargements or miniatures and frames therefor. The use by respondents of the terms "art association," "art studio," "art company," art institute," "academy of art" and other terms of similar import and meaning misleads and deceives the purchasing public as to the character of the business actually conducted by the respondents and has caused the purchasing public to confuse respondents' business with various organizations similar in name or designation which conduct an "art association," "art studio," "art institute," "art company," or "academy of art," and which are properly designated as such.

In truth and in fact, the products produced by respondents are not portraits or oil paintings, as such terms are ordinarily understood, finished in oil, by hand, on linen, silk, or "Japanese" silk, but, to the contrary, are made with water colors, as hereinabove described, on a type of photographic print paper containing no linen or silk materials but so finished that the surface has the appearance of cloth.

4. When an order is secured, the delivery of the finished product is made at a subsequent date by a respondent representative or respondent sales agent or some individual associated with respondents other than the respondent or associate who secured the original order. The person making the delivery is represented by the respondents to be a "field artist" or "instructing artist." The picture is presented to the purchaser in a frame of peculiar octagonal, convex shape, regardless of whether or not a frame has been previously ordered. In the event the purchaser objects to the quality, design, or price of the frame, or does not desire to purchase the frame, although previously advised that there is no obligation to buy a frame, he is for the first time informed that a frame for the product may not be purchased from any source other than through the respondents; that the portrait will not hold its colors or be of any value unless it is framed; and that

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the customer has agreed in the contract to "protect" and "exhibit" the portrait and consequently under the contract must buy a frame. In the event the purchaser refuses to buy a frame, the respondents in many instances refuse to deliver the completed picture, regardless of whether or not it has been paid for in full, or to return the original photograph loaned by the customer until a frame is ordered or a claimed balance due is paid in full.

In truth and in fact, the sales agent represented by respondents to be a "field artist" or "instructing artist" is not an artist in the sense that such term is ordinarily understood by the consuming public. On the contrary, said so-called artist is nothing more than a delivery man or frame salesman operating for and on behalf of respondents. Purchasers are not advised and there is no such understanding or agreement in connection with said contracts that photographs or snapshots loaned or submitted by purchasers are to be retained by respondents until payment of any sum alleged by respondents to be due them. To the contrary, purchasers are advised by respondents that photographs loaned to respondents will be returned by respondents at the time the finished product is submitted, regardless of whether or not such product or a frame therefor is purchased. Respondents conceal and have concealed from purchasers at the time the "portrait" is ordered the fact that the finished product will be cut in an octagonal shape and will be delivered in a frame of peculiar octagonal, convex form and shape; and that it will be impossible for the customer thereafter to obtain a frame to fit said portrait except from or through respondents at prices fixed by respondents.

5. The said respondents in other instances further represent that a drawing contest will be held in a certain community for the purpose of deciding who shall be one of the few lucky persons to have respondents place paintings on exhibition in their homes in connection with a "special advertising offer" or "special introductory offer." In connection with said drawings, respondents produce a number of sealed envelopes containing various slips of paper. It is represented that most of said slips are blank and of no value but that a few are certificates or coupons which will entitle the holder thereof to two genuine hand-painted portraits finished in oil for the sum of \$10 or one such painting for \$7.50 (at various times similar offers are made at different prices). The said envelopes containing said slips are so manipulated by respondents that all prospective customers invariably draw a "lucky" coupon or certificate, of which the following is typical:

SUPERIOR ART STUDIO
1301 McCALLIE AVENUE,
CHATTANOOGA, TENNESSEE.

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For the purpose of advertising the SPECIALLY DESIGNED STREAMLINE PORTRAITS in full colors and extending our business.

The Original Holder of This
RED SEAL CERTIFICATE

is entitled to receive and take advantage of Our Special Introductory Offer. Acceptable Photographs must be furnished our representative.

This certificate is non-negotiable and redeemable only as stipulated above.

Right is reserved to withdraw certificate if Photographs are not suitable for Portraits.

Issued to-----

SUPERIOR ART STUDIO

Various other types of certificates not specifically set out herein are used by the respondent representatives and respondent sales agents in carrying out said so-called drawing contest scheme.

The holders of said "red seal certificates" or other so-called "lucky" coupons are led by the false and deceptive statements and representations of respondents and by the "fake" drawings in which the holders were "lucky" to believe that said coupon or certificate places holders at a distinct advantage in purchasing a painting or portrait and such holders are thereby induced to enter into contracts for the purchase of a so-called "painting" or "portrait." In truth and in fact, said coupon or certificate gives the holder thereof no advantage in price whatsoever, for practically all prospective purchasers are permitted to secure a "lucky" certificate or coupon and all purchasers may purchase said "paintings" or "portraits" at the price used by respondents in making the so-called "special introductory offer."

The aforesaid false and misleading statements, representations, acts, practices, and methods used by the respondents in connection with the conduct of their business enterprise, as aforesaid, are not all inclusive but are illustrative of the character and type of statements, representations, acts, practices, and methods used by respondents to mislead and deceive members of the purchasing public and to induce the purchase of their said products.

PAR. 6. A crayon is a pencil-shaped piece of colored clay, chalk or charcoal used for drawing upon paper. A crayon drawing is the act or art of drawing with crayons. A drawing is a representation produced by the art of drawing; a work of art produced by pen, pencil, or crayon. The pastel, in art, is a colored crayon made of pigments ground with chalk and compounded with water into a sort of paste. A drawing made with a colored chalk or crayon is called a pastel, as is also the art of drawing with colored crayons.

A painting is a likeness, image, or scene depicted with paints without the aid of photography. A water color is a painting with pig-

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ments for which water, and not oil, is used as a solvent. A portrait in its ordinarily accepted meaning, is a picture of a person drawn from life, especially a picture or representation of a face; a likeness, particularly in oil. An oil painting is a painting done by hand with brushes in plastic oil colors on canvas, or other material, without the aid of photography.

PAR. 7. In the course and conduct of their business, respondents' selling and distributing methods are directed primarily to accomplish the sale of a picture frame at an exorbitant price and the respondents' various activities and representations in securing contracts for portraits are used to enable respondents to contact the purchaser for an opportunity to sell picture frames of cheap and inferior quality at prices which are far in excess of the prices at which frames of similar quality usually and customarily sell for in the ordinary course of business.

PAR. 8. Each of said respondents herein has acted and does act in concert and cooperation with one or more of the other respondents herein in doing and performing the acts and practices herein alleged and in furtherance of said understandings, agreements, combinations, and conspiracies.

PAR. 9. The use by the respondents of the aforesaid acts, practices, and methods in connection with the offering for sale and sale of said products in commerce, as aforesaid, has had, and now has, the tendency and capacity to, and does, mislead and deceive the purchasing public concerning the quality and value of respondents' products and the nature of the business conducted by respondents, and has led, and does lead, purchasers erroneously and mistakenly to believe that the representations and implications so made and used by respondents are true, and cause a substantial number of the purchasing public to purchase said products under the mistaken and erroneous belief that they are securing high grade, quality portraits or paintings and picture frames of exceptional value.

The use by respondents of the aforesaid acts, practices, and methods has the tendency and capacity to, and does unfairly divert trade to respondents from their competitors engaged in the sale and distribution of tinted or colored enlargements or miniatures of photographs and snapshots in commerce among and between the various States of the United States and in the District of Columbia, who truthfully represent their said products. As a consequence thereof, substantial injury has been done, and is now being done, by respondents to competitors in said commerce.

PAR. 10. The aforesaid acts and practices of respondents as herein alleged, including said understandings, agreements, combinations and

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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 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 the 31st day of March 1942, issued its amended complaint in this proceeding charging the above named respondents with the use of unfair methods of competition in commerce in violation of the provisions of said act. On April 4, 1942, through their counsel Frank J. Wideman, appearance was entered and answer to said amended complaint was filed by the following respondents: W. S. Edwards and Ida Lillian Wilson Edwards, individually and trading as Old Master Portrait Co. and formerly trading as Colonial Art Institute and Superior Art Studios and Old English Art Co.; Jack E. Bramley and Grayce Nix, individually and trading as Streamline Art Co.; N. W. Frazier, individually and trading as Federal Art Co.; J. E. Woods, individually and trading as Paramount Art Co.; J. P. Kennington, individually and trading as Kennington Art Studio; S. C. Porter, individually and trading as Peerless Studio; R. H. Page, individually and trading as Page Art Co.; H. F. Wilson, individually and trading as Wilson Portrait Co.; Jack Howard, individually and trading as Portrait Art Agency; T. F. Keegan, individually and trading as World Art Co.; R. L. Gaddis, individually and trading as Artcraft Portrait Co.; E. T. Greenwood, individually and trading as Vogue Art Studio; Ted Bramley, individually and trading as Rembrandt Portrait Co.; and R. F. Jones, H. P. Bingham, F. H. McGaughey, N. B. Broward, James W. Boulware, Neal Allen, Elizabeth Melvin, Catherine Broward, Letha Revels Putney, Edith Edmonson, Carl Newton, Juanita Holland, Joseph Durrance, Willis G. Edwards, Jack Edwards, O. A. Willocks, H. D. McGaughey, R. S. Bishop, O. R. Melvin, Jack Ritchie, Lee Beaver, Marshall Steadham, Mary Schutz, C. J. Wallentelsz, Tom Bell, G. C. Sours, R. C. Speece, and A. S. King. On April 7, 1942, through their counsel, Whitaker, Hall, Haynes & Allison, appearance was entered and answer to said amended complaint was filed by the following respondents: Success Portrait Co., a corporation, and Success Portrait Co., trading as Chattanooga Art Medallion Co. and as Art Trade Studios; James Morton McConnell, individually and as president and a director of Success Portrait

Co.; Ozro Absolem Brammer, individually and as vice president and a director of Success Portrait Co.; George Nathan McConnell, individually and as secretary and a director of Success Portrait Co.; and Jesse Roy Hodge, individually and as treasurer and a director of Success Portrait Co. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the aforementioned respondents through their respective counsel, Frank J. Wideman, and Messrs. Whitaker, Hall, Haynes & Allison, and by Richard P. Whiteley, Assistant Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, might be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the Commission might proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceedings without the presentation of argument or the filing of briefs, counsel for said respondents expressly waiving the filing of report upon the evidence by the trial examiner.

Following service of said amended complaint upon him, respondent, S. P. Rogers, individually and trading as Rogers Art Co., on April 20, 1942, filed his answer to said amended complaint. The Commission thereafter, by order entered herein, granted the motion of respondents, S. P. Rogers, for permission to withdraw his said answer and to substitute therefor an answer admitting all of the material allegations of fact set forth in said amended complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission.

Thereafter, this proceeding regularly came on for final hearing before the Commission on said amended complaint, answers thereto, and stipulation, said stipulation having been approved and accepted and filed, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Success Portrait Co. (hereinafter referred to as corporate respondent), is a corporation organized and doing business under and by virtue of the laws of the State of Tennessee. Said corporate respondent also trades as Chattanooga Art Medalion Co. and as Art Trade Studios.

Respondent, James Morton McConnell, is president and a director of corporate respondent, Success Portrait Co.

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Respondent, Ozro Absolem Brammer, is vice president and a director of said corporate respondent, Success Portrait Co.

Respondent, George Nathan McConnell, is secretary and a director of said corporate respondent, Success Portrait Co.

Respondent, Jesse Roy Hodge, is treasurer and a director of said corporate respondent, Success Portrait Co.

The above-named individual respondents have their principal office and place of business with corporate respondent at 1301 McCallie Avenue in the city of Chattanooga, State of Tennessee.

Respondents, W. S. Edwards and Ida Lillian Wilson Edwards, are individuals, trading as Old Master Portrait Co., and formerly trading as Colonial Art Institute, as Superior Art Studios and as Old English Art Co., 1301 McCallie Avenue, Chattanooga, Tenn.

Respondent, Jack E. Bramley, is an individual, trading as Streamline Art Co., 1301 McCallie Avenue, Chattanooga, Tenn. His address is Box 242, Little River Station, Miami, Fla..

Respondent, N. W. Frazier, is an individual, trading as Federal Art Co., 1301 McCallie Avenue, Chattanooga, Tenn. His address is Box 720, Tarboro, N. C..

Respondent, J. E. Woods, is an individual, trading as Paramount Art Co., 1301 McCallie Avenue, Chattanooga, Tenn. His address is Route 1, Shelby, N. C.

Respondent, J. P. Kennington, is an individual, trading as Kennington Art Studio, 1301 McCallie Avenue, Chattanooga, Tenn. His address is Kershaw, S. C.

Respondent, S. C. Porter, is an individual, trading as Peerless Studio, 1301 McCallie Avenue, Chattanooga, Tenn. His address is Corpus Christi, Tex.

Respondent, R. H. Page, is an individual, trading as Page Art Co., 1301 McCallie Avenue, Chattanooga, Tenn. His address is 135 West Second Street, Washington, N. C.

Respondents, H. F. Wilson and Jack Howard, are individuals, and their addresses are Grenada, Miss., and Fair Mount, Ga., respectively. Said respondents are or were associated with one another trading as Wilson Portrait Co. and as Wilson Art Association, 1301 McCallie Avenue, Chattanooga, Tenn. Respondent, Jack Howard, also trades or has traded as Portrait Art Agency.

Respondent, T. F. Keegan, is an individual, trading as World Art Co., 1301 McCallie Avenue, Chattanooga, Tenn. His address is Vero Beach, Fla.

Respondent, R. L. Gaddis, is an individual, trading as Artercraft Portrait Co., 1301 McCallie Avenue, Chattanooga, Tenn. His address is Bartow, Fla.

Respondent, E. T. Greenwood, is an individual, trading as Vogue Art Studio, 1301 McCallie Avenue, Chattanooga, Tenn. His address is Paces, Va.

Respondent, Ted Bramley, is an individual, trading as Rembrandt Portrait Co., 1301 McCallie Avenue, Chattanooga, Tenn.

Respondent, S. P. Rogers, is an individual, trading as Rogers Art Co., 1301 McCallie Avenue, Chattanooga, Tenn. His address is Kan- napolis, N. C.

The above-named respondents, to wit: W. S. Edwards, Ida Lillian Wilson Edwards, Jack E. Bramley, N. W. Frazier, J. E. Woods, J. P. Kennington, S. C. Porter, R. H. Page, H. F. Wilson, Jack Howard, T. F. Keegan, R. L. Gaddis, E. T. Greenwood, Ted Bramley, and S. P. Rogers are hereinafter on occasion referred to as "operators."

Respondents, Neal Allen, Lee Beaver, Tom Bell, H. P. Bingham, R. S. Bishop, James W. Boulware, Catherine Broward, N. B. Broward, Joseph Durrance, Edith Edmonson, Jack Edwards, Willis G. Edwards, Juanita Holland, R. F. Jones, A. S. King, F. H. McGaughey, H. D. McGaughey, Elizabeth Melvin, O. R. Melvin, Carl Newton, Grayce Nix, Letha Revels Putney, Jack Ritchie, Mary Schutz, G. C. Sours, R. C. Speece, Marshall Steadham, C. J. Wallentelsz, and O. A. Willocks, are individuals, some of whom are or were sales agents and employees of one or more of the respondent "operators" hereinbefore named and described. Said respondents are hereinafter referred to as "sales agents." Many of said individual respondents represent and have represented the address 1301 McCallie Avenue, Chattanooga, Tenn., to be the location of their place of business. Several of the individual respondents named in the complaint herein are unknown to the corporate respondent and "operators" and said corporate respondent and "operators" are without knowledge of the business connections of such individuals.

All of the respondents executing said stipulation and respondent, S. P. Rogers, are engaged in the sale and distribution of tinted or colored enlargements or tinted or colored miniatures of photographs and snapshots, and in the sale of frames therefor. Respondents cause and at all times mentioned herein have caused said products, when sold, to be transported from the State of Tennessee to the purchasers thereof located 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 said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Said corporate respondent is engaged in the business of producing, selling, and distributing among other things, colored or tinted enlargements and miniatures of photographs and snapshots and selling frames therefor, and in the sale and distribution thereof the officers and directors of said corporate respondent, in their individual and respective official capacities, dominate, direct and control the corporate policies, affairs and activities of said corporate respondent and exercise a substantial measure of direction and control over the organization, management, policies, operation and financing of the remaining respondents herein in carrying out the methods of competition and acts and practices herein described.

Cooperating with said corporate respondent in connection with the sale of its aforesaid products are the various individuals heretofore designated as "operators," who, through the medium of various and sundry trade names, sell and distribute corporate respondent's products in commerce to the consuming public.

The aforesaid "sales agents" are connected with the "operators" in varying capacities in connection with the sale and distribution of said corporate respondent's products.

PAR. 3. In the course and conduct of said business, respondents have been, and are now, engaged in direct and substantial competition with various corporations, partnerships and individuals also engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia, of tinted or colored enlargements and tinted or colored miniatures of photographs and snapshots, and of frames therefor.

PAR. 4. The business of selling corporate respondent's said enlargements and miniatures of photographs and snapshots and frames therefor is and has been effected and accomplished by the following well-coordinated sales plan of procedure in which all of said respondents participate and cooperate.

Said corporate respondent, Success Portrait Co., under the direction, guidance, and control of its aforesaid officers and directors, operates and for several years last past has operated an art studio at the said address, 1301 McCallie Avenue, Chattanooga, Tenn. The said tinted or colored enlargements and miniatures sold by Success Portrait Co., and by said "operators" and "sales agents" are made here. At said studio are also kept and maintained stocks or frames for said enlargements and miniatures, also sold by corporate respondent and the "operators" and "sales agents."

In effecting the sale of corporate respondent's said enlargements and miniatures and frames therefor, the said "operators" employ numerous persons in various capacities such as "crew managers," "sales

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agents," "road managers," "proof passers," "field artists," and "delivery men," to contact the purchasing public. Said employees, including "sales agents" are connected with and render services to the "operators" as a result of oral understandings or arrangements entered into covering the sale of the aforesaid enlargements and miniatures and frames therefor.

Equipment, including catalogs, order blanks, daily report forms, receipts, and, in many instances, sample cases containing samples of corporate respondent's products, is furnished by corporate respondent to said "operators" and "sales agents" upon their order. The corporate respondent, in many instances, causes orders or contracts for its products to be entered on printed forms provided by it for that purpose. Some of these order blanks or contracts contain or have contained corporate respondent's name and address as well as the name or trade name of the "operator" through whom the order is secured. Many of the order blanks or contracts used by various "operators" contain and have contained only the trade name of the "operator" using the address of corporate respondent, Success Portrait Co., 1301 McCallie Avenue, Chattanooga, Tenn. In other order blanks or contracts used by said "operators" it is or has been variously stated that said "operator" is "affiliated with" or is a "subsidiary of" said corporate respondent, but not all of said "operators" have used the terms "affiliated with" or "subsidiary of."

When an order is obtained, said order blank or contract is signed by the "operator" or "sales agent" obtaining the order as "representative" or "company representative" on a line provided therefor.

Among and typical of the form of order blank or contract used by the "operators" in connection with the trade names mentioned herein and various other trade names to the Commission unknown, other than and excluding the wording "subsidiary of Success Portrait Company" as stated hereinabove, is the following:

* * * * *

SUPERIOR ART STUDIOS

Home Office, 1301 McCallie Ave
CHATTANOOGA, TENN.

Sketching and Portrait Painting

THIS CERTIFICATE entitles the holder to one HAND-PAINTED STREAM-LINE PORTRAIT size 9×14, for the producing cost of \$2.98 *unframed*.

To introduce this grade of art, we are placing only a limited number under this offer. You will be notified by mail when proof of your portrait is ready. It will then be shown at your residence when the \$2.98 *must be paid*.

In consideration of the reduced price at which this portrait is placed, it is expressly agreed that it shall be properly protected and exhibited.

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Verbal agreements other than herein stated, will not be recognized.

We guarantee the return of your photograph with the finished work.

COUNTERMANDS NOT RECOGNIZED
PAY THE MAN WHO SHOWS THE PROOF

Date _____ Representative _____

In furtherance of the conduct of the business arrangements between corporate respondent and said "operators," corporate respondent furnishes "operators" and "sales agents" if desired, with identification and credential certificates addressed to and to be shown to the general public, recommending them to the public, and designating each as "a customer of ours handling portraits, miniatures, art paintings and frames," and certifying to his honesty and dependability. On occasion, also, corporate respondent furnishes letters of similar import to "operators" the same also to be exhibited to prospective customers.

Corporate respondent is at all times in possession of the names and addresses of customers whose pictures it is making. Corporate respondent keeps on hand, for the use of "operators" and "sales agents," copies of order books and of envelopes used for mailing prints obtained from the public in cases where said "operators" or "sales agents" use and are permitted to use corporate respondent's catalog in selling to the public. Corporate respondent, upon request, furnishes its sales catalogs and sales outfits to prospective selling agents, charge being made for sample cases.

Mail from customers of the "operators" and "sales agents" is addressed to many of them at 1301 McCallie Avenue, Chattanooga, Tenn., and in some instances is there opened by someone connected with corporate respondent, Success Portrait Co., when so requested by the "operators" or "sales agents." If the contents of a letter are not understood the letter is forwarded out to the field to the particular "operator" or "sales agents" involved, for verification and further attention.

Officials of corporate respondent, from time to time, pay or have paid visits to various "operator" organizations instructing them regarding sales technique and methods and as to how business may be obtained and improved. Daily reports from salesmen in the field have been required by corporate respondent, covering the canvass of customers, on proof passing and the delivery of products sold. Corporate respondent, on occasion, writes or offers to write types of sales talks deemed appropriate for use by "sales agents" or "operators." Corporate respondent, upon occasion, confers and has conferred with "operators" regarding the use of trade names to be employed by them.

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and with respect to contract forms to be used. Officials of corporate respondent, have endorsed over to Success Portrait Co., for deposit to its credit at Hamilton National Bank, post office money orders payable to various trade name companies sent in by "operators." Open accounts covering the operation of "operators" in the field are kept at the office of corporate respondent and from time to time advances are made to those "operators" who submit orders and remit collections deemed sufficient to justify such office credit operations. Other "operators" or "sales agents" are dealt with on a strict c. o. d. basis. Officials of corporate respondent, maintain and have maintained close supervision over the business affairs and practices of respondent "operators" and "sales agents" and on occasion have urged the discharge of "sales agents."

All of the aforesaid "operators" in selling to and dealing with the consuming public, and in pursuance of an agreement theretofore entered into between them and said corporate respondent, are permitted to use and do use corporate respondent's Chattanooga address, 1301 McCallie Avenue, as and for the address of each trade name and company under which they respectively operate.

PAR. 5. The Commission finds that the so-called or designated Old Master Portrait Co., Superior Art Studios, Colonial Art Institute, Old English Art Co., Streamline Art Co., Federal Art Co., Paramount Art Co., Kennington Art Studio, Peerless Studio, Page Art Co., Wilson Portrait Co., Wilson Art Association, Portrait Art Agency, World Art Co., Arcraft Portrait Co., Vogue Art Studio and Rembrandt Portrait Co., each employing and using the address of 1301 McCallie Avenue, Chattanooga, Tenn., as and for its actual business location and address, are merely trade names assumed and used by said "operators" to promote the sale by them of products actually produced by corporate respondent Success Portrait Co.

The Commission further finds in this relation that no "operator" or "sales agent" herein mentioned, except in the case of one or two of them, has owned, operated, or conducted, directly or indirectly, any "art studio," "institute of art," or place of business at Chattanooga, Tenn., or elsewhere in which tinted or colored enlargements or miniatures of photographs or snapshots are or were made, and no such "operator" or "sales agent" owns, operates, or controls the photograph equipment and paraphernalia essential in producing such enlargements or miniatures. No such "operator" or "sales agent" has had in his employ or under his control or direction, artists, operators, or persons skilled in such photographic technique or in the use of the air brush, paint brush, or skilled in drawing or pastel work. No such "operator" or "sales agent" has in fact maintained an office or

an office force at the address, 1301 McCallie Avenue, Chattanooga, Tenn., with the exception of respondent, W. S. Edwards, who employs a secretary and conducts correspondence from that address. The respective trade names used and employed by said "operators" and "sales agent" do not actually designate a particular existing business, that is, a place at which a business operation is actually located and conducted. The business operations conducted at said Chattanooga address, 1301 McCallie Avenue, are and have been actually conducted only by corporate respondent, Success Portrait Co.

The Commission finds that no "operator" employing the terms or legends "Subsidiary of Success Portrait Co.," or "Affiliated With Success Portrait Co.," is now or ever has been a business subsidiary or affiliate of said corporate respondent as said terms imply and are understood to mean in the field of business or commerce. The said terms, "subsidiary of" and "affiliated with" as used in connection with the name "Success Portrait Co." have been employed by "operators" to induce customers to believe that they are doing business with an operating established house, and serve to refer the customers to Success Portrait Co. for a financial rating of the trade name company and the "operator" using it.

The Commission finds that as a result of the use of said "operator" of the aforesaid trade names, as herein described, purchasers and prospective purchasers are led to believe that they are and were contracting or dealing with duly constituted representatives or sales agents of actually existing and operating art studios or associations, or art institutes whose names appear on the various contract forms, order blanks or identification certificates employed by said "operators" and "sales agents." As a result of such belief so engendered, purchasers and prospective purchasers confuse the character of the business actually conducted by said "operators" and have confused the business of "operators" with various organizations similar in name and designation which are actually conducting, or which may properly be designated as art associations, art studios or art institutes.

The Commission finds that as a further result of the foregoing business arrangements and practices employed by "operators" and "sales agents," liability to purchasers is evaded for their statements, representations, acts, practices, and sales methods in the sale of corporate respondent's products, and that business rating, credit, prestige, and standing to which they are not entitled are and have been given to said various trade names which employ the same business address as that of corporate respondent, Success Portrait Co., particularly to trade name companies representing that they are subsidiaries of or affiliated with corporate respondent, Success Portrait Co.

PAR. 6. In connection with the sale of corporate respondent's said colored photographic enlargements and miniatures by said "operators" employing corporate respondent's business address at 1301 McCallie Avenue, Chattanooga, Tenn., as aforesaid, various "sales agents" working under the immediate direction of and in cooperation with said "operators" visit the homes of customers and prospective customers located in the cities, towns, and rural communities of various States of the United States other than the State of Tennessee. Each "sales agent" carries with him, for use in soliciting orders, samples of the work that is represented as typical of that done by the trade name company he happens to represent. Said samples are attractively displayed. They have been reproduced and built up from carefully selected photographic subjects of highest photographic value. Colored enlargements and miniatures of such selected photographs are skillfully done with great care and detail. Many of them closely resemble paintings done by hand. These attractive specimens in colored enlargements or miniatures are exhibited by "sales agents" upon entering the home of a customer. The company represented by the "sales agent," it is stated, is prepared to duplicate or reproduce such type of work. If a customer is interested, the customer is induced to permit the "sales agent" to inspect photographs or snapshots of some member of the family, dead or living. Finally, the "sales agent" selects a photograph or snapshot pronounced suitable or satisfactory for reproduction purposes. The photograph or snapshot so selected is represented as a model or guide to the studio's or art institute's artist, who, it is represented, will "paint" a portrait of the same or make a "painting" or "hand-painted portrait" or "hand-painted streamlined portrait." The picture or snapshot is to be returned with the completed work, it is further represented. Reference is made by the "sales agent" from time to time to the "portrait painting" as being made by the particular trade name company said "sales agent" stated that he represents the same in each instance being a trade name using the Chattanooga address of corporate respondent, Success Portrait Co. It is further represented from time to time by "sales agents" selling corporate respondent's said products, that an "oil painting" will be made, to be finished in oil by hand on linen, silk or "Japanese silk."

The Commission finds that the attractive samples or specimens exhibited to the customer by "sales agents" are made by corporate respondent, Success Portrait Co., and not by any trade name company using its Chattanooga address for selling purposes. In various instances, due to the fact that "operators" and "sales agents," in obtaining business, select from customers and approve as suitable for the making

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of colored enlargements or miniatures, photographs or snapshots which are inferior in various essentials from a photographic standpoint, and fundamentally incapable of actually producing good enlargements, customers find and have complained that the "paintings" or "pictures" made for them are inferior to the samples exhibited and used by the "sales agents" in obtaining the orders for the said "paintings" or colored enlargements. Due to the fact that the respondent, Success Portrait Co., is furnished, in some instances, with such photographs or snapshots of inferior quality from which to make its finished product, said corporate respondent on occasion, is unable to produce from such photographs or snapshots finished products equal in appearance to the samples which had been displayed to purchasers.

PAR. 7. The Commission further finds that a drawing is a representation produced by the art of drawing, a work of art produced by pen, pencil, or crayon. A crayon drawing is the act or art of drawing with crayons. The pastel, in art, is a colored crayon made of pigments ground with chalk and compounded with water into a sort of paste. A drawing made with colored chalk or crayon is called a pastel, as is also the art of drawing with colored crayons.

The Commission finds that a painting is understood by artists who paint pictures, photographers who color photographs, and the general public, as an original representation by the painter of a design, image, or object on a surface by means of paints, water color, or oil; a free-hand image painted directly on the surface without the intervention of any mechanical means, such as a camera. This is the conception which the general public has of the term "painting." A water color is a painting with pigments for which water, and not oil, is used as a solvent. An oil painting is a painting done by hand with brushes in plastic oil colors on canvas, or other materials, without the aid of photography.

The Commission finds in this connection that the so-called "paintings," "hand-painted portraits," and "hand-painted" miniatures produced, sold, and distributed by respondents are not paintings. They are not oil paintings, and are not finished in oil by hand on linen or on silk or on Japanese silk. Said pictures do not conform to the established belief of the public as to what constitutes a painting, nor do said pictures constitute paintings as understood by artists who paint pictures, or photographers who color photographs. Said pictures sold and distributed by respondents are in fact colored photographs, miniatures, or enlargements, produced by making a photographic negative of the photograph furnished by the customer. Through the use of special photographic equipment an enlargement, or a reduction in the case of the miniature, is then made from the negative on spe-

cially prepared paper which will take dry color or absorb liquid color. Said enlargements or miniatures are then colored by the use of pastel or crayon, water color or other powdered pigments soluble in water, sprayed upon the photographic reproduction in solution through the use of a mechanical air brush operated by compressed air, a portion of the colors being supplied by hand through the use of a camel hair brush. While corporate respondent does have in its employ artists who are capable of producing genuine oil paintings as such works of art are known, and while corporate respondent's studio can fill an order for a genuine oil painting, corporate respondent does not now and has not used oil paint in the finishing or coloring of the said enlarged photographs and the said miniatures sold as hereinabove described.

PAR. 8. Respondent "sales agents," in further connection with sales talks made by them in selling the products produced by corporate respondent, have represented at times in such relation that an art studio, an art institute, or academy of art is being maintained in which art classes are held for the purpose of giving experience to young artists and that "sales agents" desire to obtain various photographs from which hand-painted portraits and hand-painted miniatures are to be painted, and further, that if the prospective purchaser will lend to the "sales agent" a photograph or snapshot, it will be copied by hand in oil colors by an art student attending such classes.

In many instances, in connection with the sale of said enlargements or miniatures, "sales agents" represent to customers that the sale is an "introductory offer" only, that only a limited number of "paintings" are to be placed in any given town or locality, that the customer will pay only for the work done by the artist, the picture to cost nothing; that the "painting" or portrait is being offered at a "reduced price," and that in consideration of such fact it is expressly agreed that it is to be "protected and exhibited." In other instances the price named is designated as an "advertising price" or it is represented that the picture is being offered merely at the "cost of production."

The Commission finds that said "operators" do not maintain or operate any art studios or academies of art, and that no art classes are conducted at any time for the purpose of giving experience to young artists or otherwise. The Commission finds further that corporate respondent's said colored enlargements and miniatures are not sold by said "sales agents" at a "reduced price" or at any "advertising price," or "special introductory price" or for the "cost of production" or to a selected few in any given place or locality but that on the contrary the prices at which said products are offered and sold are the

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usual and customary prices asked of the consuming public by said respondent "operators" and "sales agents."

PAR. 9. During the 5 years last past some of said "operators" and "sales agents," in some instances, have further represented to customers and prospective customers that a drawing contest would be held in a certain community for the purpose of deciding who should be one of the few "lucky persons" to have "paintings" placed on exhibition in their homes in connection with a "special advertising offer" or "special introductory offer." In connection with said drawings, "sales agents" produce a number of sealed envelopes containing various slips of paper. It is represented that most of said slips are blank and of no value but that a few are certificates or coupons which will entitle the holder thereof to two genuine hand-painted portraits finished in oil for the sum of \$10.00 or one such painting for \$7.50 (at various times similar offers are made at different prices, such as the "lucky" drawer getting a picture for half price or two for the price of one). The said envelope containing said slips are manipulated by "sales agents" so that all acceptable prospective customers invariably draw a "lucky" coupon or certificate, of which the following is typical:

SUPERIOR ART STUDIO
1301 McCallie Avenue,
Chattanooga, Tennessee.

For the purpose of advertising the SPECIALLY DESIGNED STREAMLINE PORTRAITS in full colors and extending our business.

The Original Holder of This

RED SEAL CERTIFICATE

is entitled to receive and take advantage of Our Special Introductory Offer. Acceptable Photographs must be furnished our representative.

This certificate is non-negotiable and redeemable only as stipulated above.

Right is reserved to withdraw certificate if Photographs are not suitable for Portraits.

Issued to -----

SUPERIOR ART STUDIO

Various other types of certificates not specifically set out herein are used by numerous "operators" and "sales agents" in carrying out said so-called drawing contest scheme.

The Commission finds that said alleged drawing contest is a deceptive scheme conceived for the sole purpose and with the result of inducing prospective purchasers to believe that if they draw "lucky" numbers they will have the advantage of obtaining pictures at prices greatly below prices other customers must and do pay for them. By means of this "drawing contest" scheme members of the purchasing public are beguiled into believing that they are the exceptional few

whom fortune has favored. As a result of the statements and representations of respondent "operators" and "sales agents" in relation to said "drawing contest" the holders of said "red seal certificates" or other so-called "lucky" coupons are led to believe that said coupons or certificates place holders thereof at a distinct financial advantage in purchasing a "painting" or "portrait," and such holders are thereby induced to enter into contracts for the purchase of a so-called "painting" or "portrait." In truth and in fact said coupon or certificate gives the holder thereof no advantage in price whatsoever, or otherwise, for practically all prospective purchasers sold through the "draw" are permitted to secure a "lucky" certificate or coupon and all persons considered acceptable customers may purchase said "paintings" or "portraits" at the price used by respondents in connection with the said "draw" or "special introductory offer."

PAR. 10. In various instances "operators" and "sales agents" engaged in the sale of said colored enlargements and miniatures as produced by corporate respondent make no reference to or mention of a frame at the first or original contact with a customer. The information that it will be necessary to later place the picture in a frame in order to preserve it, that the picture will be of an unusual shape and design, and that later on another "sales agent" will call for the purpose of selling a frame for the picture, is not, in various instances, given to the customer by the first or contact "sales agent."

A second "sales agent" designated as "field artist" or "instructing artist" later appears with an uncolored rough proof or "sketch" of the enlarged photograph. This "sales agent" collects for the cost of the colored enlargement, usually the sum of \$2.98, and endeavors to sell the customer a frame for the picture. In numerous instances the matter of the frame is here mentioned for the first time. The frame not being mentioned by the first "sales agent" various customers have assumed at the outset that the frame would be included in the price quoted by the said first "sales agent." If the customer objects to, or refuses to purchase a frame on account of the matter of price, quality, or design, the customer then on various occasions is informed by the "sales agent" for the first time that a frame for the picture cannot be purchased from any source other than through his company; that the company he represents manufactures the only frame that will fit the picture; that the portrait will not hold its color or be of any value unless it is framed. From time to time the attention of the customer is called to the customer's agreement to "protect" and "exhibit" the portrait and to the "obligation" of the customer under the contract to buy a frame. In the event the customer refuses to buy a frame from the second agent or "field artist" or "instructing

artist" and elects to have the picture finished for the sum agreed upon and paid, the matter of the purchase of a frame is further deferred until the delivery of the finished colored enlargement by a third "sales agent." The person making delivery of the finished or colored enlargement in many instances, presents the same to purchaser in a frame, whereupon the above-described reasons why a frame must be bought from "sales agents" will be stated, or may be repeated, as the case may be. In the event the customer finally refuses to buy a frame, respondent "sales agents" in some instances refuse to deliver the completed picture, regardless of whether or not it has been paid for in full, and refuse to return the original photograph loaned by the customer, until the frame is ordered.

The Commission finds that the "sales agent" represented to be a "field artist" or "instructing artist" is not an artist in the sense that such term is ordinarily understood by the consuming public; that actually, said so-called "field artist" or "instructing artist" is a delivery man or frame salesman operating for and on behalf of respondents. The Commission finds that purchasers are not advised, and that there is no such understanding or agreement in connection with said contracts, that photographs or snapshots loaned or submitted by purchasers are to be retained by respondents until a frame is purchased or payment is made of any sum alleged by respondents to be due them. On the contrary, purchasers are advised originally by "sales agents" that photographs loaned to them will be returned at the time the finished product is submitted. The Commission finds that, in many instances, "operators" and "sales agents" conceal and have concealed from purchasers at the time the "portrait" is ordered the fact that the finished product will be octagonal in shape and will be delivered in a frame of peculiar octagonal, convex form and shape; and that it will be impossible for the customer thereafter to obtain a frame to fit said portrait except from or through respondents at prices fixed by them.

The Commission finds that in the course and conduct of their business, the efforts of respondents are and have been directed largely to the sale of frames. The Commission finds, that the sales plan employed by said respondent "operators" and "sales agents," which is characterized by the sale of a picture only by the first or original contact salesman and the subsequent sale or attempted sale of a frame by a second and different party known as "field artist" or "instructing artist" who, calls later, is operated primarily and actually for the purpose of, and has the effect of, misleading and forcing the customer into buying something he did not originally intend buying, namely, a frame; that as a result the purchaser of a picture is forced to deal with respondents in connection with the purchase of frames. This method of dealing

in frames, the Commission finds, places in the hands of "operators" and "sales agents" a means whereby, in some instances, they may represent and have represented, as the customary or regular prices or values for frames, prices and values which are in fact substantially in excess of the prices at which frames of similar type and quality are usually and customarily sold in the normal and usual course of business.

PAR. 11. The Commission finds that the aforesaid statements, representations, acts, practices, and methods used by various of the respondents in connection with the conduct of their business enterprise, as aforesaid, are not all inclusive, but are illustrative of the character and type of statements, representations, acts, practices and methods used by respondents in carrying out the well coordinated sales plan in which they have participated and cooperated to induce the purchase of their said products.

PAR. 12. The Commission finds that the use by respondents of the hereinbefore enumerated acts, practices, and methods in connection with the offering for sale and sale of said products in commerce, as aforesaid, has had, and now has, the capacity to, and does, mislead and deceive the purchasing public concerning the quality and value of the products sold, the nature, and character of the business conducted by respondents, including the financial standing and responsibility of said "operators" and "sales agents," the origin and identity of the products being sold and as to the sales proposal to be submitted later involving the sale of a frame of peculiar shape and design, and that the use of such acts, and practices and methods further has led, and does lead, purchasers erroneously and mistakenly to believe that the said representations and implications so made and used by respondents are true, and causes and has caused a substantial number of the purchasing public to purchase substantial quantities of respondent's said products.

PAR. 13. The following persons named as parties respondent in the amended complaint issued by the Commission in this matter on March 31, 1942, were not served respectively with a copy of said complaint nor have they entered appearance in the proceeding by counsel or otherwise:

C. A. Hicks, individually and trading as H. B. Art Co.; Ruth Attix, Henry Acie Barrentine, Earl Bigby, Lloyd Brown, H. V. Caton, L. Clark, O. D. Clayton, Robert Dodd, George F. Donehue, J. F. Evans, Thos. Gaddis, V. Gantt, Jimmy Greenwood, L. H. Marsden, Thelmar Marshall, J. H. McCoy, J. W. Parker, T. E. Savage, Lillian Shepard, John G. Tierney, Stella Timmerman, Kay Harriet Whitten, and Chester Wofford.

Order

CONCLUSION

The aforesaid acts and practices of respondents as herein described, effected, and accomplished through the medium of a well-coordinated sales plan of procedure in which said respondents have participated and cooperated, 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respondents, Success Portrait Co., a corporation and trading as Chattanooga Art Medallion Co. and as Art Trade Studios; James Morton McConnell, individually and as president and a director of corporate respondent; Ozro Absolem Brammer, individually and as vice president and a director of corporate respondent; George Nathan McConnell, individually and as secretary and a director of corporate respondent; Jesse Roy Hodge, individually and as treasurer and a director of corporate respondent; W. S. Edwards and Ida Lillian Wilson Edwards, individually and trading as Old Master Portrait Co. and formerly trading as Colonial Art Institute, as Superior Art Studios, and as Old English Art Co.; Jack E. Bramley and Grayce Nix, individually and trading as Streamline Art Co.; N. W. Frazier, individually and trading as Federal Art Co.; J. E. Woods, individually and trading as Paramount Art Co.; J. P. Kennington, individually and trading as Kennington Art Studio; S. C. Porter, individually and trading as Peerless Studio; R. H. Page, individually and trading as Page Art Co.; H. F. Wilson, individually and trading as Wilson Portrait Co. and Wilson Art Association; Jack Howard, individually and trading as Wilson Portrait Co., Wilson Art Association, and as Portrait Art Agency; T. F. Keegan, individually and trading as World Art Co.; R. L. Gaddis, individually and trading as Artcraft Portrait Co.; E. T. Greenwood, individually and trading as Vogue Art Studio; Ted Bramley, individually and trading as Rembrandt Portrait Co.; S. P. Rogers, individually and trading as Rogers Art Co., and Neal Allen, Lee Beaver, Tom Bell, H. P. Bingham, R. S. Bishop, James W. Boulware, Catherine Broward, N. B. Broward, Joseph Durrance, Edith Edmonson, Jack Edwards, Willis G. Edwards, Juanita Holland, R. F. Jones, A. S. King, F. H. McGaughey, H. D. McGaughey, Elizabeth Melvin, O. R. Melvin, Carl Newton, Letha Revels Putney, Jack Ritchie, Mary Schutz, G. C. Sours, R. C. Speece, Marshall Steadham, C. J. Wallentelsz, and O. A. Willocks; upon a stipulation as to the facts entered into between the above-mentioned respondents, with exception

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of S. P. Rogers, and Richard P. Whiteley, Assistant Chief Counsel for the Commission, providing that without further evidence or other intervening procedure, the Commission might issue and serve upon said respondents therein named findings as to the facts and conclusion based thereon, and an order disposing of the proceeding; and upon the substitute answer filed in this proceeding by respondent, S. P. Rogers, in lieu of the answer theretofore submitted by him, admitting all of the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, 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, Success Portrait Co., a corporation and trading as Chattanooga Art Medallion Co. and as Art Trade Studios, or doing business under any other trade name or style; James Morton McConnell, individually and as president and a director of Success Portrait Co.; Ozro Absolem Brammer, individually and as vice president and a director of Success Portrait Co.; George Nathan McConnell, individually and as secretary and a director of Success Portrait Co., and Jesse Roy Hodge, individually and as treasurer and a director of Success Portrait Co.; W. S. Edwards and Ida Lillian Wilson Edwards, individually and trading as Old Master Portrait Co. and formerly as Colonial Art Institute and as Superior Art Studios and as Old English Art Co.; Jack E. Bramley, individually and trading as Streamline Art Co.; N. W. Frazier, individually and trading as Federal Art Co.; J. E. Woods, individually and trading as Paramount Art Co.; J. P. Kennington, individually and trading as Kennington Art Studio; S. C. Porter, individually and trading as Peerless Studio; R. H. Page, individually and trading as Page Art Co.; H. F. Wilson, individually and trading as Wilson Portrait Co. and Wilson Art Association; Jack Howard, individually and trading as Wilson Portrait Co., Wilson Art Association and as Portrait Art Agency; T. F. Keegan, individually and trading as World Art Co.; R. L. Gaddis, individually and trading as Artercraft Portrait Co.; E. T. Greenwood, individually and trading as Vogue Art Studios; Ted Bramley, individually and trading as Rembrandt Portrait Co., and S. P. Rogers, individually and trading as Rogers Art Co., or trading under any other name or names, and Neal Allen, Lee Beaver, Tom Bell, H. P. Bingham, R. S. Bishop, James W. Boulware, Catherine Broward, N. B. Broward, Joseph Durrance, Edith Edmonson, Jack Edwards, Willis G. Edwards, Juanita Holland, R. F. Jones, A. S. King, F. H. McGaughey, H. D. McGaughey, Elizabeth Melvin, O. R. Melvin, Grayce Nix, Carl Newton, Letha Revels

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Putney, Jack Ritchie, Mary Schutz, G. C. Sours, R. C. Speece, Marshall Steadham, C. J. Wallentelsz, and O. A. Willocks, their respective representatives, salesmen, and employees, directly or through any corporate or other device in connection with the offering for sale and sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of tinted or colored photographic enlargements or miniatures of photographs and snapshots and of frames therefor, do forthwith cease and desist from:

1. Representing directly or in any manner, that colored or tinted photographs or colored or tinted photographic enlargements or reduction are hand-painted or are paintings.

2. Using the terms "oil painting," "portrait painting," "hand painted," or "hand painted portrait," or the word "painting" either alone or in conjunction with any other words or terms in any way to designate, describe, or refer to colored or tinted pictures, photograph, photographic enlargements or reductions, or other pictures produced from a photographic base or impression.

3. Representing that pictures being sold in the regular course of business at the usual and customary prices therefor are being or will be sold only to a limited number of customers, or as an "introductory offer," or at an "advertising price," or at a "reduced price," or representing in any manner that a purchaser is receiving an advantage in price or other consideration not ordinarily available.

4. Representing that any specified sum in excess of the actual cost of production is merely the "cost of production."

5. Representing that the picture to be made and delivered will be a reproduction or duplication of the sample displayed to the customer unless in fact the picture thereafter delivered is of the same quality, design, and workmanship as said sample.

6. Using the trade names "Art Studios," "Art Institute," "Art Company," "Art Association," or any other fictitious name of similar import unless the respondent so using such name or names actually owns, operates, conducts, or controls an organization or establishment of the character indicated and comprehended by the trade name so used.

7. Misrepresenting, or authorizing, permitting, or cooperating in the misrepresentation of, the financial responsibility, prestige, or standing of the respondents or the character and extent of their business by falsely claiming to be a subsidiary or business affiliate of an operating, established house, or by deceptively using the business address of such established house as and for a business allegedly operated by them, and from misrepresenting through the use of fictitious trade names and misleading street and post office addresses

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the place, character, and extent of the business actually conducted by them.

8. Representing that respondents maintain art studios, art institutes, or art academies in which art classes are held for the purpose of giving experience to young artists and that such students will paint by hand, portraits and miniatures from photographs furnished to sales agents by customers.

9. Using a "draw," "draw contest," or so-called "lucky" blanks, number slips, coupons, or certificates, or any other device, plan, or scheme, or any prize contest or special introductory or advertising offer, so as to represent, indicate or imply that any customer will obtain a financial advantage thereby or be entitled to receive any picture free or to receive a substantial discount or reduction in the price of any picture or pictures.

10. Using the terms "field artist" or "instructing artist" or similar terms to designate, describe or refer to operators or salesmen delivering pictures or "sketches" of pictures or selling frames.

11. Concealing from or failing to disclose to customers at the time pictures are ordered that the finished picture when delivered will be so shaped and designed that it can only be used in a specially designed, odd-style frame which can be procured only from respondents.

12. Failing or refusing, in cases where a picture ordered has been completed and paid for, to return to the customer the completed picture or the photograph or snapshot previously loaned by the customer for use in producing the picture.

13. Representing as the customary or regular prices or values for frames, prices and values which are in fact greatly in excess of the prices at which said frames are customarily offered for sale and sold in the normal and usual course of business.

It is further ordered, That this proceeding, insofar as it relates to C. A. Hicks, individually and trading as H. B. Art Co., Ruth Attix, Henry Acie Barrentine, Earl Bigby, Lloyd Brown, H. V. Caton, L. Clark, O. D. Clayton, Robert Dodd, George F. Donehue, J. F. Evans, Thos. Gaddis, V. Gantt, Jimmy Greenwood, L. H. Marsden, Thelmar Marshall, J. H. McCoy, J. W. Parker, T. E. Savage, Lillian Shepard, John G. Tierney, Stella Timmerman, Kay Harriet Whitten, and Chester Wofford be, and the same hereby is, closed without prejudice, the Commission being unable to effect service of complaint upon said respondents.

It is further ordered, That all of said 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.

Syllabus

IN THE MATTER OF

EMPIRE MERCHANDISE CORPORATION AND SOPHIE RUBMAN

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 3357. Complaint, Mar. 14, 1938—Decision, Aug. 4, 1942

Where a corporation and its president, who owned virtually all of its stock and controlled its policies and practices, engaged in the competitive interstate sale and distribution of novelty merchandise such as flashlights, jewelry, watches, chinaware, and silverware—

(a) Distributed through the mails to prospective sales representatives throughout the United States advertising circulars which depicted and described certain articles offered as compensation for the sale of merchandise, also depicted, and which contained also a pull card for use in sale of articles listed and priced, under a scheme in accordance with which the particular article to be received, and the price to be paid, were disclosed after removal from the card of the tab selected by the customer, and the operator was compensated, at his option, by cash or merchandise premium; and

Thereby supplied and placed the means of conducting lotteries in the hands of such operators who, notwithstanding notice purportedly offering customer the right to buy any article involved at price shown on back of slip, made use of their said pull-card device in selling their merchandise in accordance with aforesaid plan; contrary to an established public policy of the United States Government and in violation of the criminal laws, and in competition with many who, unwilling to use a method involving chance or contrary to public policy, refrain therefrom;

With the result that many persons were attracted by said sales method and the element of chance involved therein, and were thereby induced to buy and sell said merchandise in preference to that offered and sold by competitors who do not use such methods, thereby diverting trade unfairly from said competitors to them; and

(b) Represented that the articles offered to their sales representatives were free and without cost to them through use on their circulars of such statements as "Free gifts for all" and "Wonderful gifts for all";

When in fact none of the articles thus designated were given away free, but all were supplied to their representatives only for services rendered in sale of merchandise in question, and price thereof was included in that of the other articles which the representative was required to sell;

With effect of misleading and deceiving a substantial number of persons into the mistaken belief that such articles of merchandise were given to representatives free, thereby causing them to undertake the sale of said products in preference to those of competitors; whereby trade was diverted from their competitors to them;

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