

IN THE MATTER OF

G. S. PROPER, DOING BUSINESS AS ALBEE STUDIO

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

Docket 4871. Complaint, Nov. 19, 1942—Decision, Mar. 5, 1943

Where an individual, engaged in the District of Columbia in interstate sale and distribution of photographs, and particularly tinted or colored photographs and enlargements and miniatures, and in making various advertising and sales representations pertaining thereto by means of printed coupons distributed generally through house-to-house canvassers who represented as a "Special Advertising Offer," good for a limited time only, the sales offer set forth thereon, under which one photograph or miniature could be secured for the amount stated; he deriving his profits from the sale of additional pictures—

- (a) Made use in said various coupons of words and terms "Goldtone Portrait Colored in Oil," "Goldtone Silk Vitiva," and "Hand Colored in Oil" in describing its photographs and miniatures; and represented, through its canvassers—who called attention to the soft and beautiful luster of the pictures, represented as the results of their genuine "Goldtone" finish—that the products for which coupons were being sold were really oil paintings and portraits;

The facts being that said products were not the result of the more expensive "Goldtone" process involving the use of salts of chloride of gold with its much warmer tones, but were merely sepia or brown-tone prints; so-called "Silk Vitiva" products were not composed of, or printed on, silk or any substance containing silk, but simply printed on paper having a smooth, glossy surface, and were, further, in no sense genuine portraits or paintings done or colored in oil by the skill and brush of a painter, as implied, but merely slightly tinted or colored photographic prints;

- (b) Set forth on said coupons such legends as "Regular studio value \$5.00" in connection with the dollar offer for "One Goldtone Portrait Colored in Oil" and "Regular Studio value \$10.00" in connection with the \$2.50 offer for "One Goldtone Silk Vitiva Miniature," and in smaller type, "Good until _____". Note: For time extension mail offer to studio with self-addressed stamped envelope"; and through its agents placed particular emphasis upon the fact that aforesaid products were being obtained for \$1.00 and \$2.50, respectively, and that special prices would be made for additional pictures ordered;

The facts being that said pictures did not have any such values as \$5.00 and \$10.00 and had never sold for said amounts, and purported limited offers were not actually terminated or withdrawn as stated, but in truth comprised part of a continuous scheme of solicitation in the regular course of business;

- (c) Did not direct, through their sales agents, attention to the less conspicuous type appearing on the margin of coupons to the effect that there was only one advertising coupon to a person or family "unless additional portraits are ordered," but sold as many coupons as they were able to, giving the

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customer to understand that each coupon thus purchased and paid for was good for one picture and would be honored accordingly at said individual's studio, and promptly assuring the customer, in the event he happened to notice the aforesaid small type provision, that the same might be disregarded; and thereby led public mistakenly to believe that where more than one coupon had been sold to a family or to its members each would be honored, and that restrictions, if any, had been waived;

(d) Refused, as a rule, in cases in which a customer did not order additional pictures, to honor his certificate and make a single one, notwithstanding fact that representative had already been paid in full or in part for the picture, and in case customer brought up matter of prior payment, advised him that the money was kept by his sales agent and that he got none of it, and in the event he did occasionally make a single picture, in case of a coupon bought for Christmas or some other special date or event, did so at his own convenience and subsequent to the date for which it had been ordered; and

(e) Refused, on occasion, in cases in which a customer had been sold more than one coupon, to accept proofs of the sittings or to make any picture unless additional pictures were ordered;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that such representations were true, thereby inducing its purchase of said products:

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

Mr. Marshall Morgan for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by authority vested in it by said act, the Federal Trade Commission, having reason to believe that C. S. Proper, individually, and trading as Albee Studio, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, G. S. Proper, is an individual, trading as Albee Studio, with his principal office and place of business located at 1426 G Street NW., Washington, D. C.

PAR. 2. The respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of photographs, and particularly tinted or colored photographs and enlargements and miniatures of photographs, in commerce between and among the various States of the United States and the District of Columbia.

In the course and conduct of the said business, the said respondent causes his products when sold to be transported from his place of

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business in the District of Columbia to purchasers thereof located in various States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce, particularly in the District of Columbia and between the District of Columbia and the States of Maryland and Virginia.

PAR. 3. In the course and conduct of his said business, in connection with and for the purpose of inducing the sale of his said products in commerce, respondent has made and is now making various false and deceptive advertising and sales representations concerning his said products.

In printed coupons of general distribution, disseminated by respondent through his salesmen and canvassers, by United States mails, and by other means, respondent has made the following among other representations:

One Goldtone Portrait Colored in Oil

* * * * *

Unmounted Size 7 x 10

For \$1.00 Only

Pay Representative \$1.00 for this offer. No balance at studio.

* * * * *

This offer obtained through representative only. Regular Studio Value \$5.00

One Goldtone Silk Vitiva Miniature

* * * * *

Complete in frame Hand colored in oil.

For \$2.50 Only

Pay Representative \$2.00 for this offer. Pay 50¢ balance at studio.

* * * * *

This offer obtained through representative only. Regular Studio Value \$10.00.

In smaller type than that employed in representing the type and character of the product and its price, the following, among other statements and representations, appear as printed matter in said coupons:

Good until * * * Note: For time extension mail offer to studio with self-addressed stamped envelope.

* * * * *

* * * Only one coupon to a family unless additional portraits are ordered.

PAR. 4. Respondent's plan of operation is in substance as follows:

House-to-house salesmen or canvassers, equipped with attractive sample photos, and with coupons, contact members of the purchasing

public at their homes or places of business. Said sales offer is here presented as a special "advertising offer" made in connection with a special advertising campaign and good only for a limited time. Respondent's said salesmen call attention to the soft and beautiful luster of the said pictures, which it is represented, results from their being genuine Goldtone finish.

Said sales agents further in sales talks made to customers and prospective customers represent and have represented, and give and have given customers and prospective customers to understand, that the product for which coupons are being sold is really an oil painting, a portrait, a product painted in oil from a photographic base, a genuine work of art produced by the hand and brush of a painter.

Said sales agents further in their said sales talks place particular emphasis upon the fact that a \$5 "Goldtone Portrait Colored in Oil" is being obtained for only \$1; and that a genuine "Goldtone Silk Vitiva Miniature" of the value of \$10 is being obtained by the customer for only \$2.50, and that special prices will be made for additional pictures ordered.

Upon purchasing a coupon, or giving an order for a "portrait" or "miniature," the customer either pays the entire price originally asked at the time the order is given, or else pays a part of said price, the balance to be paid thereafter at respondent's studio.

PAR. 5. At no time during the progress of respondent's said sales talks to customers and prospective customers is attention directed to less conspicuous type appearing on the margin of coupons in which it is variously stated that there is "Only one Albee advertising coupon to a person," and "Only one coupon to a family unless additional portraits are ordered." Many, if not most, of said "offers" by respondent's said sales agents are made at the homes and dwelling places of customers, where there are present various members of a family circle. On such occasions respondent's said sales agents sell, and collect money for, as many coupons as they are able to place in one family. The customer is given to understand that each coupon so purchased and paid for is good for at least one picture, and will be so honored at respondent's studio. In the event a customer happens to note the smaller-type provision on a coupon to the effect that only one coupon may be sold to a family, respondent's sales agent promptly advises that such provision may be disregarded by the customer. Respondent's said agents sell, and have sold, coupons to as many members of a family as possible, and likewise sell, and have sold to individuals in any household, office, or other address, as many coupons as they are able to dispose of at said household, office, or other address. Upon the consummation of the sale of the coupon

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respondent's sales agent affixes his signature to the coupon, thus endorsing or certifying to its validity at the studio.

PAR. 6. When the customer presents a coupon at the studio for a sitting, he or she must pay any further sum stated in the coupon to be due. When the customer has been subjected to the appropriate number of sittings required to obtain a satisfactory negative or negatives, proofs of the same are thereupon mailed to the customer from respondent's studio. These proofs are accompanied by an instruction card advising that proofs must be kept out of strong light, that they have not been retouched, and that all lines, shadows, and blemishes can be removed therefrom. The customer is further advised in this card that all proofs must be returned personally within 15 days, that delivery of same will not be accepted by mail or through third parties, and that minors' proofs must be returned by parents. It is stated in italics on this card that "additional pictures may be obtained in conjunction with this offer at special prices." In the event a customer does not call at respondent's studio within a reasonable time for completed pictures, a further circular card is addressed to the customer, urging immediate attention to the matter.

Respondent's profits on his business are derived from the sale of additional pictures. When a customer for any reason does not order additional pictures, but decides to take just the one picture stipulated for in the coupon offer, respondent retains any money theretofore collected, and, as a rule, refuses to honor his certificate, and refuses to make a single picture. This action on the part of respondent is taken despite the fact that respondent's sales representative has already been paid in full for the picture, or has collected part payment thereon. Should the customer bring up the matter of prior payment for the picture, the customer is informed that that money was kept by respondent's sales agent, and that respondent did not get any of it. Similarly, where a customer has been sold more than one coupon, and respondent has collected therefor, respondent nevertheless refuses, and has refused, to accept proofs of said sittings, or to make any pictures thereof, unless additional pictures are ordered.

On other occasions where a coupon has been bought for use in having a picture made for some such anniversary as Christmas or for some other special date or event, respondent from time to time has refused to make said picture for said anniversary or event unless additional pictures are ordered, and should respondent, on occasion, finally make a single picture, respondent does so at his own convenience and subsequent to the date of the occasion for which the picture has been specially ordered.

PAR. 7. The aforesaid representations and implications made and employed by respondent are false, misleading, and deceptive in that:

The tinted or colored photographs produced by respondent are not genuine portraits or paintings done in oil, or colored in oil by the skill and brush of a painter as said representations imply. Said photographs or pictures, in truth and in fact, as produced and sold by respondent, are merely sepia or brown-tone prints produced from a photographic base and slightly tinted or colored thereafter.

The public is led to believe that where more than one coupon has been sold to a family or to members thereof each such coupon would be honored by respondent, when such is not the case, and that any restriction on more than one coupon to a family or household, if such existed, has been waived and set aside by the respondent by taking more than one order in a family or household and collecting the money therefor without advising such purchasers of the existence of any restriction; that in cases where one coupon has been bought for the production of only one picture the purchaser could secure the picture, one or more pictures, as desired, but was not required to purchase a number in excess of one in order to obtain a single picture.

The photographs or pictures represented as having so-called studio values of \$5 and \$10, respectively, have not had, and do not have or possess, any such values and have not been sold and are not currently sold by respondent for \$5 and \$10, respectively.

The offers that are represented as terminating or being limited to a certain date are not actually terminated or withdrawn at, or limited to, the time stated in any coupon. Said offers, in truth and in fact, comprise only a part of a continuous scheme of solicitation in the regular course and conduct of the business of respondent.

Customers believe that the pictures and miniatures advertised and sold by respondent as "Silk Vitiva" are composed of or printed on silk, when such is not the fact. Said pictures in fact are not produced or printed on silk or on any substance or product containing silk but, on the contrary, are merely printed on paper having a smooth, glossy surface.

PAR. 8. A genuine "Gold-Tone" print or picture is a product resulting from a process involving the use of a toning bath employing salts of chloride of gold. This process produces a much warmer tone than is true in the case of black and white or sepia, involves more labor and detail, comprehending the toning of a print or pictures a second time, and is considerably more expensive than the process employed in the production of black-and-white or sepia prints or pictures.

No chloride of gold salts are, or have been, used by respondent in connection with the developing, toning, or coloring of said so-called "Goldtone Portraits" and "Goldtone Silk Vitiva Miniatures." Said products are not genuine gold-tone pictures or miniatures, but, on the contrary, the toning process employed by respondent in producing them is an ordinary one, much less expensive, in universal use in the production of sepia or brown effects.

PAR. 9. The use by respondent of said false and misleading statements and representations in connection with the sale of the aforesaid products has a tendency and capacity to, and does, mislead and deceive purchasers and prospective purchasers of respondent's said products into the erroneous and mistaken belief that such statements and representations are true and into the purchase of substantial quantities of respondent's coupons and pictures as a result of such belief.

PAR. 10. Said acts and practices of respondent as described herein are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 19, 1942, issued and served its complaint in this proceeding upon respondent, G. S. Proper, individually, and trading as Albee Studio, charging him with unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On December 30, 1942, the respondent filed his answer, in which said answer he admitted all of the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission, having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, G. S. Proper, is an individual trading as Albee Studio, with his principal office and place of business located at 1426 G Street NW., Washington, D. C.

PAR. 2. The respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of photographs, and

particularly tinted or colored photographs and enlargements and miniatures of photographs, in commerce between and among the various States of the United States and the District of Columbia.

In the course and conduct of the said business, the said respondent causes his products when sold to be transported from his place of business in the District of Columbia to purchasers thereof located in various States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce among and between the various States of the United States, particularly in the District of Columbia and between the District of Columbia and the States of Maryland and Virginia.

PAR. 3. In the course and conduct of his said business, in connection with and for the purpose of inducing the sale of his said products in commerce among and between the various States of the United States, respondent has made and is now making various advertising and sales representations concerning his said products.

In printed coupons distributed generally by respondent through his salesmen and canvassers, by United States mails, and by other means, respondent has made the following, among other, representations:

One Goldtone Portrait Colored In Oil

* * * * *

Unmounted Size 7 x 10

For \$1.00 Only

Pay Representative \$1.00 for this offer. No balance at studio.

* * * * *

This offer obtained through representative only.

Regular Studio Value \$5.00

One Goldtone Silk Vitiva Miniature

* * * * *

Complete in frame Hand colored in oil.

For \$2.50 Only

Pay Representative \$2.00 for this offer. Pay 50¢ balance at studio.

* * * * *

This offer obtained through representative only.

Regular Studio Value \$10.00.

In smaller type than that employed in representing the type and character of the product and its price the following, among other statements and representations, appear as printed matter in said coupons:

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Good until ----- Note: For time extension mail offer to studio with self-addressed stamped envelope.

* * * Only one coupon to a family unless additional portraits are ordered.

PAR. 4. Respondent's plan of operation is in substance as follows:

House-to-house salesmen or canvassers, equipped with attractive sample photos and with coupons, contact members of the purchasing public at their homes or places of business. Said sales offer is here presented as a special "advertising offer" made in connection with a special advertising campaign and good only for a limited time. Respondent's said salesmen call attention to the soft and beautiful luster of the said pictures, which, it is represented, results from their being genuine gold-tone finish.

Said sales agents further, in sales talks made to customers and prospective customers, represent and have represented, and give and have given customers and prospective customers to understand, that the product for which coupons are being sold is really an oil pointing, a portrait, a product painted in oil from a photographic base, a genuine work of art produced by the hand and brush of a painter.

Said sales agents further in their said sales talks place particular emphasis upon the fact that a \$5 "Goldtone Portrait Colored in Oil" is being obtained for only \$1; and that a genuine "Goldtone Silk Vitiva Miniature" of the value of \$10 is being obtained by the customer for only \$2.50, and that special prices will be made for additional pictures ordered.

Upon purchasing a coupon or giving an order for a "portrait" or "miniature" the customer either pays the entire price originally asked at the time the order is given, or else pays a part of said price, the balance to be paid thereafter at respondent's studio.

PAR. 5. At no time during the progress of respondent's said sales talks to customers and prospective customers is attention directed to less conspicuous type appearing on the margin of coupons in which it is variously stated that there is "Only one Albee advertising coupon to a person" and "Only one coupon to a family unless additional portraits are ordered." Many, if not most, of said "offers" by respondent's said sales agents are made at the homes and dwelling places of customers, where there are present various members of a family circle. On such occasions respondent's said sales agents sell, and collect money for, as many coupons as they are able to place in one family. The customer is given to understand that each coupon so purchased and paid for is good for at least one picture and will be so honored at respondent's studio. In the event a customer happens

to note the smaller-type provision on a coupon to the effect that only one coupon may be sold to a family, respondent's sales agent promptly advises that such provision may be disregarded by the customer. Respondent's said agents sell, and have sold, coupons to as many members of a family as possible and likewise sell, and have sold to individuals in any household, office, or other address as many coupons as they are able to dispose of at said household, office, or other address. Upon the consummation of the sale of the coupon, respondent's sales agent affixes his signature to the coupon, thus endorsing or certifying to its validity at the studio.

PAR. 6. When the customer presents a coupon at the studio for a sitting, he or she must pay any further sum stated in the coupon to be due. When the customer has been subjected to the appropriate number of sittings required to obtain a satisfactory negative or negatives, proofs of the same are thereupon mailed to the customer from respondent's studio. These proofs are accompanied by an instruction card advising that proofs must be kept out of strong light, that they have not been retouched, and that all lines, shadows, and blemishes can be removed therefrom. The customer is further advised in this card that all proofs must be returned personally within 15 days, that delivery of same will not be accepted by mail or through third parties, and that minors' proofs must be returned by parents. It is stated in italics on this card that "additional pictures may be obtained in conjunction with this offer at special prices." In the event a customer does not call at respondent's studio within a reasonable time for completed pictures, a further circular card is addressed to the customer, urging immediate attention to the matter.

Respondent's profits on his business are derived from the sale of additional pictures. When a customer for any reason does not order additional pictures but decides to take just the one picture stipulated for in the coupon offer, respondent retains any money therefor collected and as a rule refuses to honor his certificate and refuses to make a single picture. This action on the part of respondent is taken despite the fact that respondent's sales representative has already been paid in full for the picture or has collected part payment thereon. Should the customer bring up the matter of prior payment for the picture, the customer is informed that that money was kept by respondent's sales agent and that respondent did not get any of it. Similarly, where a customer has been sold more than one coupon and respondent has collected therefor, respondent, nevertheless, on occasion refuses, and has refused, to accept proofs of said sittings or to make any picture thereof unless additional pictures are ordered.

On other occasions where a coupon has been bought for use in having a picture made for some such anniversary as Christmas or for some other special date or event, respondent from time to time has refused to make said picture for said anniversary or event unless additional pictures are ordered, and should respondent, on occasion, finally make a single picture, respondent does so at his own convenience and subsequent to the date of the occasion for which the picture has been specially ordered.

PAR. 7. The aforesaid representations and implications made and employed by respondent are false, misleading, and deceptive in that:

The tinted or colored photographs produced by respondent are not genuine portraits or paintings done in oil, or colored in oil by the skill and brush of a painter, as said representations imply. Said photographs or pictures, in truth and in fact, as produced and sold by respondent, are merely sepia or brown-tone prints produced from a photographic base and slightly tinted or colored thereafter.

The public is led to believe that where more than one coupon has been sold to a family or to members thereof each such coupon would be honored by respondent, when such is not the case, and that any restriction on more than one coupon to a family or household, if such existed, has been waived and set aside by the respondent by taking more than one order in a family or household and collecting the money therefor without advising such purchasers of the existence of any restrictions; that in cases where one coupon has been bought for the production of only one picture the purchaser could secure the picture, one or more pictures, as desired, but was not required to purchase a number in excess of one in order to obtain a single picture.

The photographs or pictures represented as having so-called studio values of \$5 and \$10, respectively, have not had, and do not have or possess, any such values and have not been, and are not currently, sold by respondent for \$5 and \$10, respectively.

The offers that are represented as terminating or being limited to a certain date are not actually terminated or withdrawn at, or limited to, the time stated in any coupon. Said offers, in truth and in fact, comprise only a part of a continuous scheme of solicitation in the regular course and conduct of the business of respondent.

Customers believe that the pictures and miniatures advertised and sold by respondent as "Silk Vitiva" are composed of, or printed on, silk, when such is not the fact. Said pictures in fact are not produced or printed on silk or on any substance or product containing silk but, on the contrary, are merely printed on paper having a smooth, glossy surface.

PAR. 8. A genuine "Gold-Tone" print or picture is a product resulting from a process involving the use of a toning bath employing

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salts of chloride of gold. This process produces a much warmer tone than is true in the case of black-and-white or sepia, involves more labor and detail, comprehending the toning of a print or picture a second time, and is considerably more expensive than the process employed in the production of black-and-white or sepia prints or pictures.

No chloride of gold salts are, or have been, used by respondent in connection with the developing, toning, or coloring of said so-called "Goldtone Portraits" and "Goldtone Silk Vitiva Miniatures." Said products are not genuine gold-tone pictures or miniatures; but, on the contrary, the toning process employed by respondent in producing them is an ordinary one, much less expensive, in universal use in the production of sepia or brown effects.

PAR. 9. The use by respondent of said false and misleading statements and representations in connection with the sale of the aforesaid products has a tendency and capacity to, and does, mislead and deceive purchasers and prospective purchasers of respondent's said products into the erroneous and mistaken belief that such statements and representations are true and into the purchase of substantial quantities of respondent's coupons and pictures as a result of such belief.

CONCLUSION

The aforesaid acts and practices of respondent as described herein are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondent, in which answer respondent admits all of the material allegations of fact set forth in the complaint and states that he waives all intervening procedure and further hearing as to the facts; and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, G. S. Proper, individually, and trading as Albee Studio, or trading under any other name, and his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of photographs, including tinted or colored photographs and enlargements or miniatures thereof, in commerce as com-

merce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that tinted or colored photographs, including enlargements and miniatures made from a photographic base are "oil paintings," or are hand-painted portraits, or are genuine works of art produced by the skill and brush of a painter.

2. Requiring holders of coupons which entitle such holders to receive one picture, miniature, or enlargement at a stipulated price to purchase additional pictures, enlargements, or miniatures as a condition to respondent's fulfillment of the undertaking specified in such coupons.

3. Permitting respondent's agents or salesmen to represent to prospective purchasers of coupons which entitle the holders thereof to a specified number of pictures, miniatures, or enlargements at a stipulated price that the respondent does not enforce the provisions written on such coupons relative to limiting the number thereof to one coupon per person and to one coupon per family unless additional pictures are ordered.

4. Attempting to enforce restrictions written into coupons offered for sale by respondent's agents, when respondent knows or has reason to believe that such agents represent to prospective purchasers that such restrictions are not enforced by the respondent and may be disregarded by prospective purchasers in purchasing such coupons.

5. Using the term "Silk Vitiva," or any other term containing the word "silk," to in any way describe or refer to pictures which are not in fact printed on silk.

6. Representing as the customary, regular, or studio prices for respondent's pictures, enlargements, or miniatures any prices or values which are in fact in excess of the prices at which said pictures, enlargements, or miniatures are customarily offered for sale and sold in the normal and usual course of respondent's business.

7. Representing through the medium of coupons, or in any other manner, that offers terminate on, or are limited to, a certain date, when such offers are not actually terminated or withdrawn at, or limited to, the date stated.

8. Using the expression "Gold-Tone" alone or in conjunction with any other word or words, to describe, designate, or indicate any sepia or other finish which is not the result of a toning or developing bath or process employing chloride of gold salts.

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

Complaint

IN THE MATTER OF
GREENING NURSERY COMPANY

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

Docket 3673. Complaint, Dec. 23, 1938—Decision, Mar. 10, 1943

Where a corporation, engaged in competitive interstate sale and distribution of fruit trees and other nursery products; to induce purchase thereof and salesmen and agents to sell its said products to the purchasing public—

Represented that it was the only nursery which used the bud-selection method of grafting in the propagation of fruit trees, and that fruit trees thus propagated could only be procured from it and its salesmen, through such statements in circulars, newspaper advertisements, and other publications as "Bud Selection, that remarkable, exclusive Greening feature!"; "For 26 years, Greening * * * have been propagating fruit trees by bud selection, exclusive, amazing, scientific discovery unduplicated in the field"; "Only Greening men can sell Bud Selected fruit trees"; and "Non-competitive field all to yourself";

The facts being that trees propagated by the bud-selection method of grafting are sold by many of its competitors; said method has been known from earliest times and was practiced in some form or other by practically all nurserymen; its methods varied from those followed by practically all commercial nurserymen only in the keeping of records of selected trees or limbs which were observed from year to year prior to and after the selection of buds for the grafting process; and extent to which its methods might be or might not be more scientific was dependent upon the nature and extent of the records kept, and the tree observation followed by competitors concerned;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such representations were true, thereby inducing its purchase of said products; and of inducing a substantial number of salesmen and agents to deal in said nursery products because of such mistaken belief; whereby trade was diverted unfairly to it from aforesaid competitors who truthfully advertised their products:

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

Before *Mr. John W. Addison* and *Mr. W. W. Sheppard*, trial examiners.

Mr. Jesse D. Kash for the Commission.

Smith, Ristig & Smith, of Washington, D. C., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal