

Syllabus

IN THE MATTER OF

EUGENE M. WOOLARD, TRADING AS MASTER ARTISTS' ASSOCIATION, INC., 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 4514. Complaint, June 3, 1941—Decision, Mar. 23, 1943

Where an individual, engaged in the competitive interstate sale and distribution of tinted or colored enlargements of photographs or snapshots, and frames therefor; and 12 sales agents who canvassed homes in cities, towns, and rural communities, carrying with them sample cases and taking orders on contract forms bearing his trade name—

- (a) Represented, through said sales agents, that said colored enlargements, described as "Portraits of Distinction" in contract forms referred to, were "portrait paintings" or "hand painted";

When in fact they were not paintings, either water color or oil, but were enlargements from photographic bases, tinted or colored with pastel or crayon, water color, or other powdered pigments sprayed thereon mainly through the use of an air brush;

- (b) Made use of the so-called "draw," under which scheme salesmen assured prospective customer that person drawing the "lucky" certificate was entitled to take advantage of the "special introductory offer" as thereon set forth, entitling him to a \$30 portrait or hand-painted portrait at the reduced price of \$7.50, or two for \$10;

The facts being that \$7.50 was the customary price at which said product was sold; the \$10 offer for two was employed by him to increase the volume of his business; no advantage was obtained by the customer through said "draw" since anyone apparently acceptable was permitted to secure a "lucky" certificate and purchase said "paintings" or "portraits" at the usual price; and the alleged "draw" was a deceptive scheme with intent and effect of inducing prospects to believe that if they drew the "lucky" certificate they would, as one of a favored few, have the advantage of obtaining pictures at prices greatly below those which other customers were required to pay therefor;

- (c) Made use of trade name "Master Artists' Association" upon his forms and in referring to his aforesaid business;

Notwithstanding fact his business did not partake of the nature of such an association and he did not operate, or possess equipment or personnel essential to the operation of, an art studio or place where tinted and colored enlargements of photographs were made, but products in question were made for him by other companies at stipulated prices; and

- (d) Made use of a sales plan under which salesmen concealed from or failed to advise prospective customer that the finished picture—which according to the contract form must be delivered framed but without obligation to accept the frame—would be hexagonal in shape with convex surface so that it could only be fitted into a specially designed frame not ordinarily obtainable; and under which salesmen delivering the enlargement framed

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as aforesaid did not make it a practice—in the event of customer's failure or refusal to buy the frame—to inform him where one might be obtained from any other source; with result of compelling purchaser to purchase a frame from said individual and pay the price demanded therefor;

With capacity and tendency to mislead and deceive the purchasing public concerning the origin, kind, quality, and value of products sold, thereby causing it to purchase said products, and to pay higher prices for them than they would have done otherwise:

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.

Mr. Marshall Morgan for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by the authority vested in it by said act, the Federal Trade Commission having reason to believe that Eugene M. Woolard, an individual, trading as Master Artists' Association, Inc., and Walter O. Wyatt, Walter E. Sneed, Bessie Swanson, L. E. Harrison, William Nadeau, E. R. Malone, G. D. Hill, Caesar Morales, Carl Rhine, D. Edwards, R. McIsaac, and Eva Metcalf, individuals, 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, Eugene M. Woolard, is an individual, trading as Master Artists' Association, Inc., with his principal office and place of business located at 5716 State Street, in the city of East St. Louis, State of Illinois. The residence or business addresses of the remaining individual respondents so far as known to the Commission are as follows: Walter O. Wyatt, Danville, Ill.; Walter E. Sneed, Dahlgren, Ill.; Bessie Swanson, Alexandria, La.; L. E. Harrison, McLeansboro, Ill.; William Nadeau, Dexter, Maine; E. R. Malone, McLeansboro, Ill.; G. D. Hill, Gilmer, Tex.; Caesar Morales, San Antonio, Tex.; Carl Rhine, 5716 State Street, East St. Louis, Ill.; D. Edwards, 5716 State Street, East St. Louis, Ill.; R. McIsaac, Arnold, Nebr.; and Eva Metcalf, 5716 State Street, East St. Louis, Ill.; these respondents are associated with Eugene M. Woolard, trading as Master Artists' Association, Inc., in the operation of said business, and also have as their business addresses 5716 State Street, East St. Louis, Ill., where mail for them, when received, is forwarded by said Eugene M. Woolard.

All of said respondents are engaged in the sale and distribution of tinted or colored enlargements of photographs or snapshots and frames therefor. Respondents sell and distribute such products to customers located in various States of the United States and cause said products when sold to be transported from the State of Illinois or other point of origin to the purchasers thereof located in various other 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 of photographs and of frames therefor and likewise with corporations, partnerships, and individuals engaged in the sale of genuine original paintings and water color paintings in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Said respondents, during the period of time for more than 3 years last past, under the control and direction of respondent, Eugene M. Woolard, have entered into and carried out various understandings, agreements, combinations, and conspiracies for the purpose of selling tinted or colored enlargements of photographs or snapshots and the frames therefor to the purchasing public by the use of false, misleading, and deceptive representations concerning said products and the nature and character of the business operated by the respondent Woolard under the name Master Artists' Association, Inc.

PAR. 4. Pursuant to the said understandings, agreements, combinations, and conspiracies, and in furtherance thereof, said respondents, acting in concert and cooperation with each other, have engaged in the following practices, and done and performed, and now do and perform, the following acts and things:

1. In the course and conduct of said business, respondent, Eugene M. Woolard, causes the other respondents named herein to visit the homes of various prospective customers in the cities, towns, and rural communities of the various States of the United States offering photographic enlargements and frames therefor for sale. Purchasers of such products are led to believe that they are contracting or dealing with a duly constituted advertising agent or representative of an association of artists organized under the name, and known as, Master Artists' Association, Inc. Each such respondent is furnished by said respondent, Woolard, with an identification card or card of credentials which is exhibited by him when interviewing various prospective purchasers. Equipment, including sample cases containing sam-

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ples of paintings, is also furnished by said respondent, Woolard, to such respondents for use in the solicitation of orders. Respondent, Eugene M. Woolard, causes orders or contracts for pictures or paintings to be taken on printed forms provided by him bearing the name and address of Master Artists' Association, Inc., across the top thereof, and in such order it is variously stated that the customer is entitled to a "Portrait of Distinction" or "Portrait Painting." The said order blank or contract is duly signed by one of the respondents herein as "Advertising Representative" on a line provided therefor. Receipts similar in tenor and effect are signed "Master Artists' Association, Inc." and mailed to the purchaser when said purchaser's order is received by respondent, Woolard. The typical form of contract used by the respondents under the trade name Master Artists' Association, Inc., is as follows:

PORTRAITS OF DISTINCTION

MASTER ARTISTS' ASSOCIATION

Incorporated
5716 State St.,
East St. Louis, Ill.

P. O. _____

Date _____

Please make for me _____ Portrait Painting _____ from the Photograph _____ I have furnished your representative this day, and deliver the same on or about the _____ day of _____ 19____. The portrait _____ are to cost me \$_____ Amount paid your representative \$_____ Leaving a balance of \$_____, which I agree to pay on time of delivery.

THIS ORDER IS NOT SUBJECT TO CANCELLATION. VERBAL AGREEMENTS ARE NOT RECOGNIZED.

The above price does not include Frames or Glass

This order is given you with the understanding that you are to deliver the above Portraits in suitable frames, which I am entitled to accept upon the payment of the prices stamped on the back of each frame, if the frames are satisfactory. If I do not accept and pay for the frames I agree to return them forthwith to the one who brings them.

Received by _____
Advertising Representative Customer

2. Such respondents, when calling upon prospective purchasers, exhibit several samples of attractively colored and finished specimens of the purported type of work to be performed. The prospective purchaser is told that similar portraits or paintings may be bought at a "Special Advertising Price" or at a "Reduced Price" or for a "Special Producing Price," or for the "Cost of Production."

3. Said respondents particularly call the prospective purchaser's attention to the beauty of the work, the finish, and to the natural color of the hair, eyes, complexion, and clothing. Invariably, the pictures are represented and referred to by said respondents as "paintings," "hand painted portraits," "polychrome portraits," or some term of similar import, and are represented as being worth \$30 or some similar amount.

4. Such respondents then inform the prospective purchaser that the completed "painting" furnished by the respondent will be similar to the sample exhibited; that the producer, Master Artists' Association, Inc., is an art association or association of artists skilled in making portraits, paintings, and similar works of art. The prospective purchaser is then induced to sign an order or contract purporting to entitle the customer to receive a portrait or painting upon payment of the cost of production only.

5. Such respondents then induce the customer to loan 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 will be returned to the customer with the completed picture.

6. The delivery of the finished picture is made at a subsequent date by a respondent other than the respondent soliciting or securing the order or by some other agent of the respondent Woolard, who presents the picture fully framed in a peculiar, octagonal, convex shape, and by means of coercion, threats, abuses, and misrepresentations of various kinds endeavors to sell the frame to the customer at varying prices.

7. In the event the purchaser objects to the quality, design, or price of the frame, although previously advised that there is no obligation to buy a frame, the purchaser is, for the first time, informed that Master Artists' Association, Inc., is the only company that furnishes frames of this particular design. As a result of such representations and conduct, the respondents generally succeed in selling the frame at an exorbitant price, usually in the neighborhood of \$15 or more.

8. In the event the purchaser refuses to buy a frame, the respondent in many instances refuses to deliver the completed picture, regardless of whether or not it has previously been paid for in full, or to return

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the original photograph borrowed from the customer, until a frame is ordered or a claimed balance is paid in full. This is the first time that the purchaser is informed definitely that the photograph which has been furnished to the respondents will not be returned unless the claimed balance is paid in full.

9. Said respondents in some instances further represent that a drawing contest will be held for the purpose of deciding who shall be one of the few "lucky" persons in a given community to have respondents place free paintings in their homes in connection with a "special advertising offer." The respondents, in connection with said drawing, 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 trade checks, certificates, or coupons, and entitle the holder thereof to two genuine \$30 hand-painted portraits for the sum of \$10 or one such painting for \$7.50. The said envelopes containing said slips are so manipulated by the respondent making the sale that the prospective purchaser invariably draws a so-called "lucky" coupon or certificate. The following is typical of the coupons or certificates used:

MASTER ARTISTS' ASSOCIATION

CHICAGO

For the purpose of advertising THE MASTER PORTRAIT, exclusive design, 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-----

MASTER ARTISTS' ASSOCIATION.

The customer is thereupon assured by the respondent that he has been very fortunate in drawing a certificate entitling him to take advantage of respondents' "special introductory offer" and the holder is thereby induced to execute a contract for one or more of such "portraits" through this "special advertising offer at greatly reduced prices."

PAR. 5. 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 pig-

ments 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 pigments 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. 6. In truth and in fact, the various statements and representations made and used by the respondents, and the acts and practices employed by them in concert and cooperation with each other, in the sale and offering for sale of said products in the cities, towns, and communities of the various States of the United States, were and are false, deceptive, and misleading in the following, among other, particulars:

(a) Master Artists' Association, Inc., is not and never has been an art association in the sense that such term is known and accepted in the world of art. On the contrary, the business conducted by respondents through the medium of the above styled trade name is and has been no more, in fact, than a business enterprise to sell to the purchasing public for profit, cheap colored or tinted photographic enlargements and frames therefor. The use by respondents of the term, art association, has misled and deceived the purchasing public as to the character of the business actually conducted by the respondents and has caused the public to confuse respondents' business with various organizations similar in name or designation which are conducted or which may be properly designated as art associations.

(b) The so-called "paintings," "hand painted portraits," or "polychrome portraits," as sold by respondents, are not portraits or paintings in any sense of the word, but to the contrary, are merely cheap, quickly made photographic enlargements, 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 sprayed upon the photographic enlargement in solution largely through the use of a mechanical air brush and compressed air. In truth and in fact, said so-called "portraits" or "paintings" are not sold at a "special advertising price" or at a "reduced price" or for a "special producing price" or for the "cost of production," but, to the contrary, the price at which respondents sell the unframed photographic tinted enlargements is in excess of and above the regular and customary price for

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which said enlargements usually and customarily sell in the ordinary course of business.

(c) The so-called pictures or "hand painted portraits" 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 so-called pictures or hand-painted portraits.

(d) Purchasers do not understand and there is no agreement in connection with said contracts that photographs submitted by them are to be retained by respondents until payment of any sum alleged by respondents to be due them. In truth, purchasers are given the impression that their photographs which have been loaned to the respondents will be returned at the time the finished product is delivered, regardless of whether or not such product is purchased.

(e) Respondents are not an association of artists and do not employ any artists, nor have they commercialized the talents of any of America's foremost portrait artists. The enlargement and coloring of photographs is done by another company for fixed prices. Master Artists' Association, Inc., is not an association of artists or an association of any kind, but is a trade name used by the respondents in the sale and distribution of said pictures and frames.

(f) Respondents conceal and have concealed from purchasers at the time the "portrait" is ordered the fact that the finished product will be delivered in a peculiar convex form, shape, and size; and that it will be impossible for the customer thereafter to obtain a frame to fit said "portrait" except from respondents at prices fixed by respondents.

(g) Respondents' selling methods are directed primarily to accomplish the sale of a picture frame at an exorbitant price, and the respondents' activities and representations in securing contracts for alleged "portraits" are used to enable respondents to contact the purchaser for an opportunity of selling frames of cheap and inferior quality at prices which are in excess of and far above the price at which said frames should usually and customarily sell for in the ordinary course of business.

(h) Respondents' sales of frames are accomplished by coercive and oppressive acts, practices, and representations, among which are retention of the original photograph submitted by the customer or the completed "portrait" or "portraits," or both, until a frame is purchased by the customer.

(i) The so-called "red seal certificates" or "lucky slips" drawn by customers from respondents upon the representation that the customer is thus obtaining a ticket or certificate entitling him to obtain

an expensive hand painting at a great saving, falsely and deceptively induces the customer to believe that he has thereby obtained a distinct advantage in price and influences him to enter into a contract for a "painting" when, as a matter of fact, such certificate gives no advantage in price and all prospective purchasers are permitted to make the same or similar lucky draw and obtain such red seal certificates.

PAR. 7. Each of said respondents herein has acted, and does act, in concert and cooperation with one or more of the other respondents in doing and performing the acts and things hereinabove alleged in furtherance of said understandings, agreements, combinations, and conspiracies.

PAR. 8. The use by the respondents of the aforesaid false and misleading representations, acts, and practices in the sale and offering for sale of purported portraits and paintings 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 sold as herein described and has thereby induced and is inducing the purchasing public to purchase said products under the erroneous and mistaken belief that the same were and are high-grade quality portraits or paintings and picture frames of exceptional value. The use by respondents of the aforesaid acts and practices has a tendency and capacity to and does unfairly divert trade to respondents from their competitors likewise engaged in the sale and distribution of tinted or colored enlargements or photographs in commerce among and between the various States of the United States and in the District of Columbia, who truthfully represent their products. As a consequence thereof, substantial injury has been done and is now being done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 9. Said understandings, agreements, combinations, and conspiracies, and the things done thereunder and pursuant thereto and in furtherance thereof, as hereinabove alleged, have been and now are effectively used by the respondents in making sales of respondents' products to the purchasing public.

PAR. 10. The aforesaid acts and practices of respondents as herein alleged, including said understandings, agreements, combinations, and conspiracies, and the things done thereunder and pursuant thereto and in furtherance thereof, as hereinabove alleged, are all to the prejudice and injury of the public and 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.

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REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on June 3, 1941, issued its complaint in this proceeding and caused said complaint to be served as required by law upon respondents, Eugene M. Woolard, an individual, trading as Master Artists' Association, Inc., and Walter O. Wyatt, Walter E. Sneed, Bessie Swanson, L. E. Harrison, William Nadeau, E. R. Malone, G. D. Hill, Caesar Morales, Carl Rhine, D. Edwards, R. McIsaac, and Eva Metcalf, individuals, charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of that act. On June 23, 1941, the above-named respondents, by counsel, filed their answer in this proceeding. Thereafter, respondent Eugene M. Woolard being desirous of expediting said proceeding and avoiding the expense incident to the taking of testimony, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent, Eugene M. Woolard, and 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 (including inferences which it might draw from said stipulated facts) and its conclusion based thereon, and enter its order disposing of the proceeding as to said respondent, Eugene M. Woolard, without the presentation of argument or the filing of briefs. Thereafter, this proceeding came on for final hearing before the Commission on said complaint, answer, and stipulation; 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. The respondent, Eugene M. Woolard (sometimes hereinafter referred to as "respondent"), is an individual, who for more than 3 years prior to July 1, 1941, traded as Master Artists' Association, Inc., with his principal office and place of business located at 5716 State Street, East St. Louis, Ill. Between the dates of July 1936, and May 26, 1938, respondent operated through the medium of

an Illinois corporation known as Master Artists' Association, from offices then located at 252 Arcade Building, East St. Louis, Ill. Said corporation was dissolved on or about May 26, 1938. Since that time, until July 1, 1941, said respondent operated under the trade name Master Artists' Association, Inc. During the time stated, respondent was engaged in the business of selling and distributing in commerce tinted or colored enlargements of photographs or snapshots and frames therefor from the above-named addresses. Respondent sold and distributed such products to customers located in various States of the United States other than the State of Illinois and caused said products, when sold by him, to be transported from the State of Illinois or other points of origin to the purchasers thereof located in various other States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, respondent was 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 of photographs or snapshots and of frames therefor.

PAR. 3. In the course and conduct of the aforesaid business, individual respondents, Walter O. Wyatt, Walter E. Sneed, Bessie Swanson, L. E. Harrison, William Nadeau, E. R. Malone, G. D. Hill, Caesar Morales, Carl Rhine, D. Edwards, R. McIsaac, and Eva Metcalf, acting as sales agents or sales representatives of respondent, Eugene M. Woolard, operating as Master Artists' Association, Inc., visited the homes of various prospective customers in the cities, towns, and rural communities of the United States and there offered for sale respondent, Woolard's, colored enlargements of photographs and snapshots and frames therefor. Said individual respondents, in offering said products for sale, represented themselves as sales agents or sales representatives of Master Artists' Association, and were so accepted and dealt with by customers purchasing respondent Woolard's said colored photographic enlargements and frames therefor. Each said sales agent carried with him for use in the solicitation of orders a sample case obtained from respondent Woolard which contained attractive samples of colored enlargements sold and distributed by and on behalf of said respondent Woolard.

Orders for colored photographic enlargements were taken on forms employed by respondent, Woolard's, salesmen. A typical form of con-

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tract used by respondent, Woolard, operating under the trade name of Master Artists' Association, is as follows:

PORTRAITS OF DISTINCTION

MASTER ARTISTS' ASSOCIATION P. O.-----
 Incorporated Date-----
 5716 State St.
 East St. Louis, Ill.

Please make for me ----- Portrait Painting----- from the Photo-
 graph----- I have furnished your representative this day, and deliver
 the same on or about the ----- day of ----- 19----- The por-
 trait----- are to cost \$----- Amount paid your representa-
 tive \$----- Leaving a balance of \$-----, which I
 agree to pay on time of delivery.

THIS ORDER IS NOT SUBJECT TO CANCELLATION.

VERBAL AGREEMENTS ARE NOT RECOGNIZED.

The above price does not include Frames or Glass

This order is given you with the understanding that you are to deliver the
 above Portraits in suitable frames, which I am entitled to accept upon the
 payment of the prices stamped on the back of each frame, if the frames are
 satisfactory. If I do not accept and pay for the frames I agree to return them
 forthwith to the one who brings them.

Received by-----
 Advertising Representative Customer

Sales agents or sales representatives, in offering for sale and selling
 respondent's colored enlargements, described them usually as "Portrait
 Paintings" or "Hand Painted."

The Commission finds that a painting is a likeness, image or scene
 depicted with paints without the aid of photography. 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 material without the aid of
 photography.

The Commission further finds that the colored enlargements de-
 scribed and designated by respondent's said sales agents or sales
 representatives as "Portrait Paintings" or "Hand Painted" were not
 in fact paintings or hand-painted products but, on the contrary, were
 enlargements made from photographic bases tinted or colored by the
 use of pastel or crayon, water color, or other powdered pigments

sprayed upon said enlargements, mainly through the use of a mechanical device known as an air brush operated by compressed air.

PAR. 4. Sales representatives of respondent from time to time effected the sale of respondent's said colored enlargements through the use of the so-called "draw." In connection with the use of the "draw," salesmen were equipped with a number of small envelopes, some of which contained blank pieces of paper and others of which contained so-called "lucky" blue certificates with a red seal in the center. Said certificate stated on its face that the holder of the certificate, for the purpose of advertising respondent's products, was entitled to receive and to take advantage of respondent's "Special Introductory Offer." In connection with the use of the "draw," the prospective customer was from time to time assured by the sales representative of respondent Woolard that the person drawing a "lucky" certificate would be entitled to receive a \$30 portrait or a hand-painted portrait at the reduced price of \$7.50, or two paintings for \$10, such prices being represented as a "Special Introductory Offer" or a "Special Advertising Offer." Prospective customers were in this way led by salesmen to believe that one drawing a "lucky" certificate would obtain a distinct financial advantage and would be enabled to obtain a painting at a great saving in price.

The Commission finds that said price of \$30 was not in fact the actual or customary price at which respondent's said colored enlargements had been sold, and that the price of \$7.50 per picture was not a reduced price nor a "Special Introductory" nor a "Special Advertising" price or offer, but was in fact the customary price at which said product was normally sold by respondent in the usual course of business, and that the price of two colored enlargements for \$10 was employed by respondent for the purpose of increasing the general volume of his picture business.

The Commission finds that said alleged "draw" was a deceptive scheme conceived for the purpose and with the result of inducing prospective purchasers to believe that if they "drew" "lucky" certificates they would have the advantage of obtaining pictures at prices greatly below prices other customers must and did pay for them. By means of this "drawing" scheme or sales plan, members of the purchasing public would be beguiled into believing that they were the exceptional few whom fortune had favored. The use by respondent of the statements and representations of his said sales agents and sales representatives, in connection with the said "draw," had the capacity and tendency to lead the holders of said blue certificates or so-called "lucky" certificates to believe that said certificates placed

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the holder thereof at a direct financial advantage in purchasing a "painting" or "portrait," and to induce such holders to enter into contracts for the purchase of so-called "paintings" or "portraits." In truth and in fact, said certificate gave the holder thereof no advantage whatsoever in price or otherwise, for any apparently acceptable customer was permitted to secure a "lucky" certificate and to purchase said "paintings" or "portraits," but was charged the usual and customary price therefor.

PAR. 5. The Commission finds that respondent's business as conducted by him at East St. Louis, Ill., did not consist or partake of the nature of any "association of artists." Nor did respondent operate at East St. Louis, Ill., or elsewhere, or possess the equipment or personnel essential to the operation of, any art studio or institute of art, nor any place of business where tinted or colored enlargements of photographs or snapshots were made. In fact, respondent's said colored enlargements were made for him by another company or other companies at prices stipulated for such service.

The Commission finds that the use of such term or trade name, "Master Artists' Association," by respondent and his sales representatives or sales agents and the sales representations made in connection therewith, as herein described, had the capacity and tendency to lead purchasers and prospective purchasers to believe that they were contracting or dealing with duly constituted sales representatives or sales agents of an actually existing art studio, association, or institute, and to cause purchasers and prospective purchasers to confuse the business of respondent with that of various art associations or with organizations similar in name and designation which were actually conducting operations essential to the production of tinted or colored enlargements of photographs and snapshots.

PAR. 6. The said colored enlargements of photographs and snapshots sold by respondent were hexagonal in shape, 10 by 15 inches in size, with raised or convex surface. Frames subsequently sold by respondent when pictures were delivered were of the same shape and contour, and equipped also with raised or convex glass. Respondent's sales representatives made it a practice to sell the picture first without mentioning the matter of a frame at that time. While respondent's salesmen from time to time informed prospective customers that they did not have to buy a frame if they did not desire to do so, and while frames sold by respondent might have been obtainable from persons, firms, or corporations engaged in business of the same character as that of respondent Woolard, such frames are not and were not ordinarily obtainable in photographic supply stores or furniture stores accessible to the consuming public. Pictures sold by respondent

Woolard were customarily delivered to the customer framed in the type or types of frames sold by respondent, i. e., hexagonal in shape and equipped with a raised or convex glass. In the event of the failure or refusal of a customer to buy a frame, respondent's salesmen did not make it a practice to inform the customer where a frame might be obtained from any source other than from respondent.

The Commission finds that the sales plan employed by respondent and his sales agents and sales representatives, to wit, by the sale of a picture by the salesman first contacting the customer and the subsequent sale or attempted sale of a frame by a second salesman calling later, and the making of the picture in a form difficult to fit with a frame, was operated primarily and actually for the purpose of forcing, and had the capacity and tendency to force, customers to buy a frame; that as a result, the purchaser of a picture was compelled to deal with respondent in connection with the purchase of a frame, and to pay the price therefor demanded by respondent.

PAR. 7. The Commission finds that the aforesaid statements, representations, acts, practices, and methods used by respondent and his said agents or sales representatives in connection with the conduct of respondent's business, as aforesaid, are not all-inclusive but are illustrative of the character and type of statements, representations, acts, practices, and methods used by respondent and his said sales agents or sales representatives to induce the purchase of the products sold by them.

PAR. 8. The Commission finds that the use by respondent, Eugene M. Woolard, and his said agents or sales representatives of the hereinabove enumerated acts, practices, and methods in connection with the offering for sale and sale of said products in commerce, as aforesaid, has had the capacity and tendency to mislead and deceive the purchasing public concerning the origin, kind, quality, and value of the products sold, and to cause the public to purchase substantial quantities of respondent, Woolard's said products, and to pay higher prices for such products than they would have done otherwise.

CONCLUSION

The aforesaid acts and practices of respondent, Eugene M. Woolard, and his said sales agents or sales representatives, as herein described, are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, and a stipulation as to the facts entered into between the respondent, Eugene M. Woolard, an individual, trading as Master Artists' Association, Inc., and Richard P. Whiteley, assistant chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon respondent, Eugene M. Woolard, findings as to the facts and conclusion based thereon, and an order disposing of the proceeding as to said respondent; and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, Eugene M. Woolard, individually, and trading as Master Artists' Association, Inc., or trading under any other name, and his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of photographic enlargements or any pictures made from a photographic base, and of frames therefor, do forthwith cease and desist from:

1. Using the terms "painting," "hand-painted," "oil painting," or "painted portrait," or any other term of similar import, to designate, describe, or refer to respondent's products; or otherwise representing, directly or by implication, that respondent's products are paintings.

2. Representing that the prices at which respondent offers for sale or sells his products constitute a discount to the purchaser, or that such prices are special or reduced or introductory prices, when such prices are in fact the usual and customary prices at which respondent sells his products in the normal and usual course of business.

3. Representing as the customary or regular prices or values of respondent's products, prices and values which are in excess of the prices at which such products are regularly and customarily sold by respondent in the normal and usual course of business.

4. Using the term "Artists' Association," or any other term of similar import, to designate, describe, or refer to respondent's business; or otherwise representing, directly or by implication, that respondent's business is conducted by an association of artists.

5. Representing, directly or by implication, that respondent owns, operates, or controls an organization or establishment possessing the equipment and employing the personnel essential to the production of tinted or colored photographs or enlargements.

6. The use of the so-called "draw" or the use of so-called "lucky" certificates or coupons, or the use of any other device, plan, or scheme whereby the representation is made, directly or by implication, that a prospective purchaser may obtain a picture or photograph free or for an amount less than that paid by purchasers generally.

7. Concealing from or failing to disclose to prospective purchasers that the finished picture or photograph, when delivered, will be so shaped and designed that it can only be fitted into a specially designed frame not ordinarily obtainable in photographic supply, furniture, or other stores accessible to the consuming public.

It is further ordered, That 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.

It is further ordered, That this proceeding be, and it hereby is, closed as to respondents, Walter O. Wyatt, Walter E. Sneed, Bessie Swanson, L. E. Harrison, William Nadeau, E. R. Malone, G. D. Hill, Caesar Morales, Carl Rhine, D. Edwards, R. McIsaac, and Eva Metcalf, without prejudice to the right of the Commission, should the facts so warrant, to reopen the same and resume trial thereof in accordance with its regular procedure.

IN THE MATTER OF
LINEN SUPPLY BOARD OF TRADE OF NEW JERSEY ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 4588. Complaint, Sept. 10, 1941—Decision, Mar. 23, 1943

Where an Association or Board, organized—as was its predecessor “Mutual Club”—to aid in carrying out the agreements, understandings, etc., below set forth by numerous members engaged in the supplying, leasing, and renting of linen supplies such as coats, trousers, aprons, frocks, and tablecloths to concerns in New York City and Newark, N. J., and the metropolitan area; 8 officers and directors thereof; and some 30 member concerns doing about 90 percent of such business in the Newark area and a substantial proportion of that in the whole metropolitan area, in competition with one another except insofar as said competition had been hindered by practices below set forth, and similarly in competition with others—

Entered into, carried out, and maintained agreements, understandings, combinations, and conspiracies among themselves to suppress and lessen competition in the business concerned in aforesaid States and metropolitan area; and

Where said various members, with the active cooperation, as the case might be, of said Board and “Club,” and individuals aforesaid; in pursuance and in furtherance of aforesaid agreements, understandings, etc.—

- (a) Organized their so-called “Mutual Club” or association to assist them in carrying out the various agreements, understandings, etc., involved, and its successor Board to control and regulate the business of supplying linen supplies in area in question;
- (b) Adopted, fixed, and maintained schedules of uniform minimum prices and discounts, and other terms and conditions for the use of their said supplies;
- (c) Reported to said Club and Board names of all customers; refrained from soliciting linen supply business from customers of other members without the consent of said Club or Board; and adopted and maintained exclusive dealing contracts with their customers whereby members required customers to deal exclusively with the respective members concerned at all times;
- (d) Admitted independent linen supply houses to membership of said Club or Board only upon condition that they indemnify members for business they took from them prior to becoming members, and required members who bought out independents similarly to indemnify other members for business taken from them by said independents;
- (e) Set up and maintained an arbitration board or committee as a disciplinary and punitive agency with authority to impose fines and suspend members who failed or refused to comply with the rules and regulations;
- (f) Operated “bogus” independent linen supply houses or “whips” to take away business from the independent houses and to discipline members who violated rules and regulations, and through said Club or Board checked and policed