

Syllabus

IN THE MATTER OF

VICTOR KLEIN, TRADING AS UNITED ART STUDIOS; AND
BENJAMIN KADET AND ADA KADET, TRADING AS
KADET ART & FRAME COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4924. Complaint, Mar. 4, 1943—Decision, June 25, 1943*

A painting is an original representation of a design, image, or object on a surface by means of paints, water color or oil, without the intervention of any mechanical means, such as a camera; a water color being a painting with pigments for which water, and not oil, is used as a solvent, while an oil painting is done by hand with brushes in plastic oil colors on canvas or similar fabric, without the aid of photography.

Where one V. K., an individual engaged in the competitive interstate sale and distribution of tinted or colored enlargements of photographs and snapshots, and frames therefor, through house-to-house salesmen whom he equipped with attractive samples of colored enlargements represented by them to prospects as having been done by "United Art Studios," trade name employed by said V. K.—

- (a) Represented and referred to said samples and enlargements in such house-to-house canvassing as "paintings," "oil paintings," "hand painted," and "oil paintings on canvas," and in order or contract form furnished to his said salesmen and displaying trade name "United Art Studio," set forth that such "certificate" entitled "the holder to ONE Octagon Portrait Painting * * * Convexed—at cost of production, \$2.95, unframed for the purpose of advertising the moderne portraiture and extending our business"; and, after advising customer that "the cost of production must be completely furnished" when proof was shown him at his residence, stated that "we only ask that you appreciate this beautiful painting and be kind enough to display it and recommend it at its value and not the amount you expended for it";
- (b) Represented to prospective customers that such was a "special introductory offer" made only to a "selected few" or "limited number" in a given locality, and a "special advertising offer" to introduce his products in that community;
- (c) Represented that said "paintings on canvas" were of the value of \$30.00 but would be made for only \$2.95, which represented merely the cost of production, no charge being made for the "artist's" time; that said "United Art Studio" was a company of high standing and exceptional financial rating which conducted a large art school, and had to provide work for its art pupils; that its profit was realized from the tuition paid by said art students, and that accordingly it would sell said beautiful paintings for only \$2.95;
- (d) Failed to call attention of customer in first contact to the peculiar convex form, shape, and size of the finished picture, or to mention the fact that, by reason thereof, a frame could not be secured readily, if at all, except from said individual at his prices; and, through the second agent or "field artist" who appeared with the uncolored rough proof of the enlarged photograph and collected the amount charged therefor, sought to sell a frame which cost him from \$1.00 to \$4.00, for amounts ranging as high as \$15.00, setting forth, in the event of the customer's objection or refusal, that the picture would be of no value if not framed, and that unless frame was bought, the picture ordered

could not be delivered; and in event of continued refusal of customer to buy frame and his election to have picture finished for sum agreed upon and paid, deferred sale of frame until a third sales agent delivered the finished picture, framed, and repeated reasons why frame must be bought; and

- (e) Among other coercive practices by which sales for frames were accomplished, threatened to retain the original photograph submitted or the completed picture, or both, until the customer purchased the frame;

The facts being that said so-called "paintings," "oil paintings," etc., were cheap photographic enlargements costing about 95¢ each, tinted or colored by mechanical air brush; prices and offers were not "special" or "introductory" or "cost of production," but were his regular prices; products were inferior in quality, workmanship, and appearance to samples submitted; said individual did not conduct an "art studio" or have in his employ or under his control any "artists" or other persons skilled in photographic technique, use of air or paint brush or color work; and the purpose of the activities and representations involved was to sell cheap frames at excessive prices;

- (f) Represented, in some instances, that a "drawing contest" would be held to decide who should be one of the few lucky persons in a given community to have "paintings" placed in their homes in connection with a "special advertising offer" or "special introductory offer"; and that in a number of sealed envelopes produced by said salesman, among largely blank slips were a few certificates entitling holder to a genuine \$30.00 handpainted portrait for the sum of \$2.95, and thereby induced them to contract for one or more paintings; when in fact an acceptable customer invariably drew, through salesman's manipulation, such a certificate, and no advantage whatever was secured by him; and

Where one B. K., engaged (with his wife) in tinting and framing photographs, and in filling orders for pictures and frames sold by aforesaid V. K. and his salesmen—

- (g) Permitted latter to use as his home office address, his own Pittsburgh address, employed by said V. K. in connection with the sale of his products, and printed on order blanks, contract forms, so-called advertising certificates, letterheads, receipt books and other forms containing name of said "United Art Studios"; and in pursuance of their arrangement, forwarded to V. K. the latter's business mail and deposited his answers in the Pittsburgh post office so as to show its stamp, thereby indicating to customers that letters to them had been mailed from "United Art Studios" at the Pittsburgh address;

With intent and effect of misleading customers and prospective customers into the belief that they were contracting and dealing with an established, operating and responsible studio, and of causing them to purchase V. K.'s pictures and frames in substantial numbers because of such belief:

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. S. F. Rose for the Commission.

Mr. Arthur D. Gatz, of Pittsburgh, Pa., for Benjamin Kadet and Ada Kadet.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Victor Klein, trading as United Art Studios, and Benjamin Kadet and his wife Ada Kadet, trading as Kadet Art & Frame Co., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Victor Klein, is an individual, trading as United Art Studios, with numerous temporary places of business, the last known being located at 1615 G Street, SE., Washington, D. C. A former post office address was 929 Fifth Avenue, Pittsburgh, Pa., as hereinafter more fully shown.

Respondents, Benjamin Kadet and Ada Kadet, are individuals, trading as Kadet Art & Frame Co., with their place of business located at 909 Fifth Avenue (formerly at 929 Fifth Avenue), Pittsburgh, Pa., as hereinafter more fully related.

PAR. 2. Respondent, Klein, is now, and for more than 3 years last past has been, engaged in the sale and distribution of tinted or colored enlargements of photographs and snapshots and of frames therefor. Respondent causes, and at all times mentioned herein has caused, said products, when sold, to be transported from the State of Pennsylvania, 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. 3. In the course and conduct of his said business respondent, Klein, has been and is 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 snapshots and of frames therefor.

PAR. 4. Respondent, Klein, on the one hand, and respondents, Kadet, on the other hand, in connection with the conduct of the said business of respondent, Klein, for more than 3 years last past, have entered into and carried out agreements and arrangements with each other for the use of false, misleading, and deceptive acts, methods, and practices, to induce the purchase of respondent, Klein's, said products, as hereinafter alleged.

Complaint

36 F. T. C.

PAR. 5. Respondent Klein, trading as United Art Studios, and operating from the address 929 Fifth Avenue, Pittsburgh, Pa., as aforesaid, and from other addresses to the Commission unknown, in effecting the sale of said tinted and colored enlargements of photographs or snapshots and the frames therefor, operates and has operated in substance as follows:

House-to-house salesmen, representing respondent Klein, equipped with attractive samples of colored enlargements, represented by said salesmen to have been done by United Art Studios, contact members of the purchasing public, generally at their respective homes. Said samples and enlargements which they are offering for sale are variously represented by said salesmen or canvassers to be "paintings," "oil paintings," "hand painted" and as "oil paintings on canvas." Prospective customers are told that the offer being made them is a "special introductory offer" made only to a "selected few," or "limited number" in a given locality; that the offer is a "special advertising offer" to introduce respondent's products in that community, that said paintings on canvas are of the value of \$30 but will be made for only \$2.95; that such latter sum represents merely the cost of production; that no charge is made for the "artist's" time. It is explained to the customer in this connection that United Art Studios conducts a large art school in Pittsburgh, Pa., and has to provide work for its art pupils; that the real source of profit to the studios from the operation of the school is realized from the tuition paid by said art students. In corroboration of this particular representation, the salesmen exhibit a photograph of a classroom showing numerous girls sitting at easels in the act of painting pictures. It is further represented in such connection that it is necessary to obtain material for these pupils to paint and that for this reason United Art Studios would sell these beautiful paintings for only \$2.95. Salesmen exhibit credentials showing that they are the duly accredited sales representatives of "United Art Studios" of Pittsburgh, Pa., which it is represented is a company of high standing, of exceptional financial rating. Customers so contacted accept said representations as true and deal with said United Art Studios on that basis.

Orders for "paintings" are and have been taken by respondent Klein's said sales representatives and agents on contract form furnished by him, designated "advertising certificate," of which the following is typical:

977

Complaint

UNITED ART STUDIO

Registered Under State Laws of Pennsylvania

929 FIFTH AVENUE

PITTSBURGH, PA.

ADVERTISING CERTIFICATE

This Certificate entitles the holder to ONE Octagon Portrait Painting 10 x 16 inches in size—Convexed—at cost of production, \$2.95, unframed for the purpose of advertising the moderne portraiture and extending our business.

You will be notified when the proof of your portrait will be shown at your residence, when the cost of production must be completely furnished.

We only ask that you appreciate this beautiful painting and be kind enough to display it and recommend it at its value and not the amount you expended for it.

Regroups \$1.00 Extra

We Guarantee Deposit Paid the Authorized Representative. No verbal agreement other than herein stated shall be recognized.

Deposit_____

Balance_____

Date of Order_____ Authorized Representative_____

This Order Positively Cannot Be Countermanded

In making this sale of a "painting," respondent's salesmen do not call the attention of the customer to the fact that, when finished, the painting will be of unusual shape, namely octagonal, nor that it will have a convex surface. No mention of a frame is made by the salesman first contacting the prospective customer.

A second sales agent, sometimes designated a "field 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 \$2.95, or any balance remaining, and endeavors to sell the customer a frame for the picture. The matter of the sale of a frame is here mentioned for the first time. The frame not having been mentioned by the first sales agent, many customers assume, and have assumed, at the outset that the frame would be included in the price quoted by the first sales agent. If the customer objects to or refuses to purchase a frame on account of price, quality, or design, he is informed by the sales agent that a frame for the picture cannot be purchased from any source other than United Art Studios; that the studios manufacture 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; that a "hand painted picture on canvas" should by all means be framed while wet, otherwise the picture will be ruined; that unless a frame is bought the picture ordered cannot be delivered. Cheap frames costing not more than \$1.10 are and have been priced by respondent's salesmen to customers for as much as \$16.

Complaint

30 F. T. C.

From time to time the attention of the customer is called to the customer's agreement to display and recommend the "painting." In the event the customer refuses to buy the frame from the second sales agent or "field 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. In many instances, this sales agent presents the picture to the purchaser in a frame, whereupon the above described reasons why a frame must be bought from respondent will be stated or repeated, as the case may be. In the event the customer finally refuses to buy a frame, respondent, Klein's, 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.

Sales agents of respondent, Klein, in some instances 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 respondent place "paintings" in their homes in connection with a "special advertising offer" or "special introductory offer." They produce a number of sealed envelopes containing slips of paper. It is represented that most of said slips are blank but that a few are trade checks, certificates or coupons, and entitle the holder thereof to a genuine \$30 hand-painted portrait for the sum of \$2.95. Envelopes containing said slips are so manipulated by the salesmen that acceptable customers invariably draw a so-called "lucky" coupon or certificate. The customer is thereupon assured that he has been very fortunate in drawing a certificate entitling him to take advantage of respondent's special introductory offer and is thereby induced to execute a contract for one or more "paintings" at what are represented to be greatly reduced prices.

When an order has been received by respondent, Klein, it is turned over to respondents, Kadet, or some other person or concern, for execution for a consideration agreed upon.

PAR. 6. In truth and in fact, the various statements and representations made and used by respondent, Klein, and his said sales agents, in offering for sale and sale of tinted or colored enlargements and frames therefor, were and are false, deceptive, and misleading in the following, among other particulars:

(a) The so-called "paintings," "oil paintings," "oil paintings on canvas," and "hand-painted" products are not such as said designations indicate, but are merely cheap, quickly made photographic enlargements costing approximately 95¢ each, which are tinted or col-

ored by the use of pastel or crayon, water color, or other powdered pigments sprayed on the enlargement, largely through the use of a mechanical air brush and compressed air.

A painting is an original representation of a design, image, or object on a surface by means of paints, water color or oil, 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 done by hand with brushes in plastic oil colors on canvas or similar fabric, without the aid of photography.

(b) The prices at which said so-called paintings are sold by respondent are not special introductory prices and they are not offered nor sold to a selected few or limited number in any given locality or place, and are not sold at the cost of production or without charge being made "for the artist's time." On the contrary, said so-called paintings will be sold to anyone at the quoted price, and the so-called special price is the regular and customary price for which they are usually and customarily sold by respondent, Klein. They have never been sold by him for, and have never had a sales value of, \$30, nor any value or price approximating such figure.

(c) The so-called paintings sold and distributed by respondent, Klein, are different from and inferior in quality, workmanship, and appearance to the samples exhibited by the sales agents in obtaining orders. Said products, in fact, are merely cheap enlargements, reproduced on cardboard, and tinted or colored with a coloring substance that is easily wiped off.

(d) Respondent's activities and representations in securing contracts for his alleged paintings or hand-painted products are in fact employed to enable him to contact the purchaser in order to obtain the opportunity of selling frames of cheap and inferior quality at prices which are in excess of the prices at which said frames usually and customarily sell in the ordinary course of business. Frames costing \$1 or less are and have been sold by respondent Klein for as much as \$16, all of which facts he conceals from customers and prospective customers.

(e) Respondent, Klein, conceals and has concealed from purchasers at the time a "painting" 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 to obtain a frame to suit the "painting" except from respondent at prices fixed by him.

(f) The so-called "lucky" certificates, tickets, or coupons drawn by the customer upon the representation that he is thus obtaining an

Complaint

36 F. T. C.

expensive hand painting at a great saving, induce him to believe that he has thereby obtained a distinct advantage in price, and influence him to enter into a contract, when, as a matter of fact, such certificate gives no advantage in price and all prospective purchasers who appear to be satisfactory financial risks are permitted to make the "lucky" draw and obtain such certificate.

(g) Respondent, Klein's, sales of frames are from time to time accomplished by coercive and oppressive acts, practices, and representations, among which are retention of the original photographs submitted by the customer or the completed picture, or both, until a frame is purchased by the customer. Purchasers do not understand, and there is no agreement in connection with said contracts, that photographs submitted by them are to be retained by respondent, Klein, until payment of any sum alleged by him to be due. In truth, purchasers are given the impression that their photographs which have been loaned to the respondent will be returned at the time the finished product is delivered, regardless of whether or not such product is purchased.

PAR. 7. Respondents, Benjamin Kadet and Ada Kadet, trading as Kadet Art & Frame Co., now operate, and for several years last past have operated, in the city of Pittsburgh, Pa., a place of business for the making and sale of enlarged and tinted or colored photographs. Pursuant to the arrangement with respondents Kadet, referred to in paragraph 4 of this complaint, respondent, Klein, has been permitted by them to use, and he has used, as his home office address the Pittsburgh office and business address of respondents, Kadet, to wit, 929 Fifth Avenue, Pittsburgh, Pa., and has printed and employed, in connection with the sale of his products, as aforesaid, order blanks, contract forms, so-called advertising certificates, letterheads, receipt books and other forms containing the name and address "United Art Studios, 929 Fifth Avenue, Pittsburgh, Pa."

In further execution of said arrangement, the practice is and has been that, when respondent, Klein, was not in Pittsburgh, respondents, Kadet, would forward all his business mail to him wherever he might be, for attention and answer. Respondent, Klein, would then answer the correspondence on letterheads containing the above name and address and send such mail in bulk to respondents, Kadet, who would deposit same in the post office at Pittsburgh. Said letters would then show the Pittsburgh post office cancelation mark and indicate to the customer that the letter had been mailed from "United Art Studios" there. At times, other Pittsburgh addresses of respondents, Kadet, would be used, such as 909 Fifth Avenue and 605 Washington Trust Building.

PAR. 8. In truth and in fact, the so-called United Art Studios was and is merely a trade name assumed and used by respondent, Klein, for the conduct of his aforesaid business. Respondent, Klein, has not owned, operated, or conducted, and does not now own, operate, or conduct an art studio, institute of art, or other place of business, in Pittsburgh or elsewhere, where tinted or colored enlargements of photographs are made, and he does not own, operate, or control nor has he owned, operated, or controlled, the photographic and other equipment essential to the production of enlargements. Neither has respondent, Klein, had in his employ or under his control and direction any artists, operators or persons skilled in photographic technique or in the use of the air brush or paint brush, or skilled in doing the necessary color work.

PAR. 9. The use by respondent, Klein, of the aforesaid trade name, United Art Studios, and of the Pittsburgh address, and the appearance of said name and address on contract and other forms used and exhibited by his sales agents and seen by customers and prospective customers, and the posting at Pittsburgh by respondents, Kadet, of mail moving from respondent, Klein, to customers and prospective customers, as hereinabove alleged, has had and has the purpose and capacity and tendency to lead customers and prospective customers to believe, and they have been led to believe, that they were and are contracting and dealing with an established, operating and responsible studio, and that the pictures respondent, Klein, sells are high-grade painted portraits and that the picture frames are of exceptional value, and to cause the public to purchase respondent's pictures and frames in substantial numbers because of such belief.

PAR. 10. The aforesaid acts and practices of respondents are all to the prejudice and injury of the public and of respondent Klein'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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 4th day of March, A. D. 1943, issued and served its complaint in this proceeding upon the respondents, Victor Klein, trading as United Art Studios, and Benjamin Kadet and Ada Kadet, trading as Kadet Art & Frame Co., charging respondents with unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On March 12, 1943, the respondents, Benjamin Kadet

and Ada Kadet, as individuals, filed answers in this proceeding. Thereafter stipulations were entered into with the respondents, Victor Klein, trading as United Art Studios, and Benjamin Kadet, trading as Kadet Art & Frame Co., and Ada Kadet, an individual, whereby it was stipulated and agreed that statements of facts signed by said respondents and Richard P. Whiteley, assistant chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may 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 said Commission may proceed upon said statements 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 proceeding without presentation of argument or the filing of briefs, said respondents expressly waiving the filing of report upon the evidence by the trial examiner.

Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answers, and stipulations, said stipulations 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, Victor Klein, is an individual, trading as United Art Studios, with numerous temporary places of business, the last one being located at 1615 G Street SE., Washington, D. C. A former post office address of this respondent was 929 Fifth Avenue, Pittsburgh, Pa.

Respondent, Benjamin Kadet, is an individual, trading as Kadet Art & Frame Co., with his principal office and place of business located at 909 Fifth Avenue, Pittsburgh, Pa. A former address of this respondent was located at 929 Fifth Avenue, Pittsburgh, Pa.

Respondent, Ada Kadet, is the wife of the respondent, Benjamin Kadet, and is now, and has been, employed by her husband as an assistant in the management and operation of the business of the Kadet Art & Frame Co. In this capacity she has and does perform an active part in the affairs of said business with her husband and, in his absence, has active charge and management of same.

PAR. 2. Respondent, Victor Klein, is now, and for more than 3 years last past has been, engaged in the sale and distribution of tinted or colored enlargements of photographs and snapshots and of frames

therefor. Respondent causes, and at all times mentioned herein has caused, said products, when sold, to be transported from the State of Pennsylvania or other points of origin to the purchasers thereof located in various other States of the United States other than Pennsylvania or other than the State where such shipments originate, and in the District of Columbia.

PAR. 3. In the course and conduct of his said business, the respondent, Victor Klein, has been and is 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 snapshots and of frames therefor.

PAR. 4. Respondent, Benjamin Kadet, trading as Kadet Art & Frame Co., now operates and for several years last past has operated in the City of Pittsburgh a place of business for tinting and framing photographs and in the sale of picture frames. Some of this respondent's customers are itinerant salesmen who sell respondent's pictures and picture frames. Among such customers who sell said products by house-to-house canvassing is the respondent, Victor Klein.

PAR. 5. Respondent, Victor Klein, trading as United Art Studios and operating from the address known as 929 Fifth Avenue, Pittsburgh, Pa., as aforesaid, and from other addresses to the Commission unknown, in effecting the sale of said tinted and colored enlargements of photographs and snapshots and the frames, therefor, operates and has operated in substance as follows:

House-to-house salesmen, representing respondent, Klein, equipped with attractive samples of colored enlargements, represented by said salesmen to have been done by United Art Studios, contact members of the purchasing public, generally at their respective homes. Said samples and enlargements which they are offering for sale are variously represented by said salesmen or canvassers to be "paintings," "oil paintings," "hand painted," and as "oil paintings on canvas." Prospective customers are told that the offer being made them is a "special introductory offer" made only to a "selected few," or "limited number" in a given locality; that the offer is a "special advertising offer" to introduce respondent's products in that community, that said paintings on canvas are of the value of \$30, but will be made for only \$2.95; that such latter sum represents merely the cost of production; that no charge is made for the "artist's" time. It is explained to the customers in this connection that United Art Studios conducts a large art school in Pittsburgh, Pa., and has to provide work for its art pupils; that the real source of profit to the Studios from the operation

Findings

36 F. T. C.

of the school is realized from the tuition paid by said art students. In corroboration of this particular representation, the salesmen exhibit a photograph of a classroom showing numerous girls sitting at easels in the act of painting pictures. It is further represented in such connection that it is necessary to obtain material for these pupils to paint and that for this reason United Art Studios would sell these beautiful paintings for only \$2.95. Salesmen exhibit credentials showing that they are the duly accredited sales representatives of "United Art Studios" of Pittsburgh, Pa., which it is represented, is a company of high standing, of exceptional financial rating. Customers so contacted accept said representations as true and deal with said United Art Studios on that basis.

Orders for "paintings" are and have been taken by respondent, Victor Klein's, said sales representatives and agents on contract form furnished by him, designated "advertising certificate" of which the following is typical:

UNITED ART STUDIO

Registered under State Laws of Pennsylvania

129 FIFTH AVENUE

PITTSBURGH, PA.

ADVERTISING CERTIFICATE

This Certificate entitles the holder to ONE Octagon Portrait Painting 10 x 10 inches in size—Convexed—at cost of production, \$2.95, unframed for the purpose of advertising the moderne portraiture and extending our business.

You will be notified when the proof of your portrait will be shown at your residence, when the cost of production must be completely furnished. We only ask that you appreciate this beautiful painting and be kind enough to display it and recommend it at its value and not the amount you expended for it.

Regroups \$1.00 Extra

We guarantee Deposit Paid the Authorized Representative. No verbal agreement other than herein stated shall be recognized.

Deposit.....
Balance.....

Date of Order _____ Authorized Representative _____

This Order Positively Cannot Be Countermanded

The respondent's pictures, when finished, are octagonal shaped, with a convex form. In making the sale of these pictures, respondent's salesmen do not call the attention of the customer to the unusual shape of the finished pictures. No mention of a frame is made by the salesman first contacting the prospective customer.

A second sales agent, sometimes designated a "field artist," later appears with an uncolored rough proof or "sketch" of the enlarged photograph. This sales agent collects for the cost of the colored en-

largement, usually the sum of \$2.95, or any balance remaining, and endeavors to sell the customer a frame for the picture. The matter of the sale of a frame is here mentioned for the first time. The frame not having been mentioned by the first sales agent, many customers assume, and have assumed, at the outset that the frame would be included in the price quoted by the first sales agent. If the customer objects to, or refuses to purchase, a frame on account of price, quality, or design, he is informed by the sales agent that a frame for the picture cannot be purchased from any source other than United Art Studios; that the Studio 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; that a "hand painted picture on canvas" should by all means be framed while wet, otherwise the picture will be ruined; that unless a frame is bought the picture ordered cannot be delivered.

Frames costing the respondent, Victor Klein, from \$1 to \$4 have been priced by respondent's salesmen to customers for as much as \$15.90.

From time to time the attention of the customer is called to the customer's agreement to display and recommend the "painting." In the event the customer refuses to buy the frame from the second sales agent or "field 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. In many instances, this sales agent presents the picture to the purchaser in a frame, whereupon the above described reasons why a frame must be bought from respondent will be stated or repeated, as the case may be.

Sales agents of respondent, Victor Klein, in some instances have represented 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 respondent place "paintings" in their homes in connection with a "special advertising offer" or "special introductory offer." They produce a number of sealed envelopes containing slips of paper. It is represented that most of said slips are blank but that a few are trade checks, certificates, or coupons, and entitle the holder thereof to a genuine \$30 hand-painted portrait for the sum of \$2.95. Envelopes containing said slips are so manipulated by the salesman that acceptable customers invariably draw a so-called "lucky" coupon or certificate. The customer is thereupon assured that he has been very fortunate in drawing a certificate entitling him to take advantage of respondent's special introductory offer and is thereby induced to execute a contract for one or more "paintings" at what are represented to be greatly reduced prices. The drawing contest referred to is not currently being used by the respondent, Victor Klein. Said respondent

ent discontinued such practice prior to the issuance of the complaint but subsequent to the institution of the investigation by the Commission in this matter.

When an order has been received by respondent, Victor Klein, it is turned over to respondents, Benjamin Kadet and Ada Kadet, or some other person or concern, for execution for a consideration agreed upon.

PAR. 6. In truth and in fact, the various statements and representations made and used by respondent, Victor Klein, and his said sales agents, in offering for sale and sale of tinted or colored enlargements and frames therefor, were and are deceptive and misleading in the following, among other particulars:

(a) The so-called "paintings," "oil paintings," "oil paintings on canvas," and "hand painted" products are not such as said designations indicate, but are merely cheap, quickly made photographic enlargements costing approximately 95¢ each, which are tinted or colored by the use of pastel or crayon, water color, or other powdered pigments sprayed on the enlargement, largely through the use of a mechanical air brush and compressed air.

A painting is an original representation of a design, image, or object on a surface by means of paints, water color or oil, 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 done by hand with brushes in plastic oil colors on canvas or similar fabric, without the aid of photography.

(b) The prices at which said so-called paintings are sold by respondent are not special introductory prices and they are not offered nor sold to a selected few or limited number in any given locality or place, and are not sold at the cost of production, or without charge being made "for the artist's time." On the contrary, said so-called paintings will be sold to anyone at the quoted price, and the so-called special price is the regular and customary price for which they are usually and customarily sold by respondent, Victor Klein. They have never been sold by him for, and have never had a sales value of, \$30, nor any value or price approximating such figure.

(c) The so-called paintings sold and distributed by respondent, Victor Klein, are different from and inferior in quality, workmanship, and appearance to the samples exhibited by the sales agents in obtaining orders. Said products, in fact, are merely cheap enlargements, reproduced on cardboard, and tinted or colored with a coloring substance that is easily wiped off.

(d) Respondent's activities and representations in securing contracts for his alleged paintings or hand-painted products are in fact

employed to enable him to contact the purchaser in order to obtain the opportunity of selling frames of cheap and inferior quality at prices which are in excess of the prices at which said frames usually and customarily sell in the ordinary course of business. Frames costing \$1 or less are and have been sold by respondent, Victor Klein, for as much as \$16, all of which facts he conceals from customers and prospective customers.

(e) Respondent, Victor Klein's salesmen have failed to explain to purchasers at the time a "painting" is ordered the fact that the finished product will be delivered in a peculiar convex form, shape, and size, and that it will be difficult or impossible for the customer to obtain a frame to suit the "painting" except from respondent at prices fixed by him.

(f) The so-called "lucky" certificates, tickets, or coupons drawn by the customer upon the representation that he is thus obtaining an expensive hand painting at a great saving, induce him to believe that he has thereby obtained a distinct advantage in price, and influence him to enter into a contract, when, as a matter of fact, such certificate gives no advantage in price and all prospective purchasers who appear to be satisfactory financial risks are permitted to make the "lucky" draw and obtain such certificate.

(g) Respondent, Victor Klein's, sales of frames are from time to time accomplished by coercive and oppressive acts, practices, and representations, among which are threats to retain the original photographs submitted by the customer or the completed picture, or both, until a frame is purchased by the customer. Purchasers do not understand, and there is no agreement in connection with said contracts, that photographs submitted by them are to be retained by respondent, Victor Klein, until payment of any sum alleged by him to be due. In truth, purchasers are given the impression that their photographs which have been loaned to the respondent will be returned at the time the finished product is delivered, regardless of whether or not such product is purchased.

PAR. 7. In the course and conduct of his said business the respondent, Benjamin Kadet, has permitted the respondent, Victor Klein, to use, and the respondent, Victor Klein, has used, as his home office address, the Pitt-burgh, Pa., office and business address of the respondent, Benjamin Kadet, to wit, 929 Fifth Avenue, Pittsburgh, Pa. The respondent, Victor Klein, has printed and employed in connection with the sale of his products, order blanks, contract forms, so-called advertising certificates, letterheads, receipt books, and other forms containing the name and address of "United Art Studios, 929 Fifth Avenue, Pittsburgh, Pennsylvania."

The respondent, Benjamin Kadet, trading as Kadet Art & Frame Co., in connection with his dealings with the respondent, Victor Klein, has filled orders for tinted pictures and picture frames sold by the respondent, Victor Klein, and by salesmen working under him. Upon receipt of such orders, the respondents, Benjamin Kadet and Ada Kadet, perform the necessary tinting service and place the pictures when tinted in frames specified by the order. Respondents, Benjamin Kadet and Ada Kadet, cause such pictures to be delivered to the respondent, Victor Klein, by mail or express to the designated places of shipment located in various States of the United States other than the State of Pennsylvania and in the District of Columbia. Payment for the services performed by the respondents, Benjamin Kadet and Ada Kadet, and for the frames so sold to the respondent, Victor Klein, is made after delivery on open account. Respondents, Benjamin Kadet and Ada Kadet, in pursuance of their arrangement with the respondent, Victor Klein, have forwarded his business mail to him wherever he might be for attention and answer. Respondent, Victor Klein, would then answer the correspondence on letterheads mailed in envelopes containing the address of the respondents, Benjamin Kadet and Ada Kadet, who then deposit same in the post office at Pittsburgh, Pa. Said letters would then show the Pittsburgh post office cancelation mark and indicate to the customer that the letter had been mailed from "United Art Studios" there. At times other Pittsburgh addresses of the respondents, Benjamin Kadet and Ada Kadet, would be used, such as 909 Fifth Avenue and 608 Washington Trust Building.

PAR. 8. The Commission finds that the so-called United Art Studios was and is merely a trade name assumed and used by the respondent, Victor Klein, for the conduct of his aforesaid business. Respondent, Victor Klein, during the times complained of, has not owned, operated, or conducted, and does not now own, operate, or conduct an art studio, institute of art, or other place of business, in Pittsburgh or elsewhere, where tinted or colored enlargements of photographs are made, and he does not own, operate, or control, nor has he owned, operated, or controlled, the photographic and other equipment essential to the production of enlargements. Neither has the respondent, Victor Klein, had in his employ or under his control and direction any artists, operators, or other persons skilled in photographic technique or in the use of the air brush or paint brush, or skilled in doing the necessary color work. The tinted and colored work done for the respondent, Victor Klein, at the address of the respondents, Benjamin Kadet and Ada Kadet, was performed by the respondents, Benjamin Kadet and Ada Kadet, and by employees under their direction and control.

PAR. 9. The use by the respondent, Victor Klein, of the aforesaid trade name, United Art Studios, and of the Pittsburgh address of the respondent, Benjamin Kadet and Ada Kadet, and the appearance of said name and address on contracts and other forms used and exhibited by sales agents and seen by customers and prospective customers, and the posting at Pittsburgh by the respondents, Benjamin Kadet and Ada Kadet, of mail moving from the respondent, Victor Klein, to customers and prospective customers, have had and have the purpose and capacity and tendency to lead customers and prospective customers to believe, and they have been led to believe, that they were and are contracting and dealing with an established, operating, and responsible studio, and to cause the public to purchase respondent, Victor Klein's, pictures and frames in substantial numbers because of such belief.

CONCLUSION

The aforesaid acts and practices of respondents, as herein found, 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.

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, Benjamin Kadet and Ada Kadet, and stipulations as to the facts entered into between the respondent, Victor Klein, trading as United Art Studios and the respondent, Benjamin Kadet, trading as Kadet Art & Frame Co., and the respondent, Ada Kadet, an individual, and Richard P. Whiteley, assistant chief counsel for the Commission, which provide, among other things, that without other evidence or other intervening procedure, the Commission may issue and serve upon the respondents herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondent, Victor Klein, trading as United Art Studios, or doing business under any other name or style, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the sale and 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 of photographs and snapshots and of frames therefor, do forthwith cease and desist from:

(a) Representing, directly or in any manner, that colored or tinted photographs or colored or tinted photographic enlargements are hand-painted or are paintings.

(b) Using the terms "paintings," "hand-painted," "oil paintings on canvas," or the word "painting," either alone or in conjunction with any other words or terms in any way to designate, describe, or refer to tinted or colored pictures, photographs, or photographic enlargements, or for pictures produced from a photographic base or impression.

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

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

(e) Representing that the picture to be made and delivered will be a reproduction or duplicate 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.

(f) 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.

(g) 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 respondent at prices fixed by him.

(h) Using a "draw," "draw contest," or so-called "lucky" blanks, trade checks, certificates, or coupons, 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.

(i) Failing or refusing, in cases where a picture ordered has been completed and paid for, to deliver to the customer the completed picture or the original photograph or snapshot previously loaned by the customer for use in producing the picture.

(j) Using the trade name "Art Studios" or any other fictitious name of similar import unless the respondent actually owns, operates, conducts, or controls an organization or establishment of the character indicated and comprehended by the trade name so used; and from representing that respondent maintains or conducts a school of art where students are given instruction in art unless and until respondent has in his employ or under his control or direction artists operators or other persons skilled or acquiring skill in photographic technique or in the use of the air brush or paint brush, and in doing color work essential in the production of tinted or colored enlargements of photographs and snapshots.

It is further ordered, That the respondents, Benjamin Kadet, individually, and trading as Kadet Art & Frame Co., or doing business under any other trade name or style, and the respondent, Ada Kadet, an individual, their representatives, salesmen, 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 tinted or colored photographs and snapshots and frames therefor, do forthwith cease and desist from:

Representing or authorizing or cooperating in the representation that the business address of said respondents is that of the respondent, Victor Klein or, in anywise, cooperating with said respondent, Victor Klein, in misrepresenting the nature, character or extent of the business conducted by him.

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.

Complaint

36 F. T. C.

IN THE MATTER OF
EMPIRE PEAT SOIL SPONGE COMPANY

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

Docket 4641. Complaint, Nov. 24, 1941—Decision, June 28, 1943

Where an individual engaged in the mining and the interstate sale and distribution of peat to wholesalers and retailers, and also directly to agricultural purchasers such as nurserymen, florists, farmers, and poultrymen—

Used designation "peat moss" in referring to his said product in newspapers, trade publications and advertising circulars, and featured the name on the boxes or crates in which it was shipped;

When in fact his said peat was not the preferred "moss peat"—derived from Sphagnum moss and found in cool northern regions with relatively high rainfall and fogs of long duration, with its higher absorptive capacity and acidity, its very low ash content and germicidal properties, and its availability for uses for which the other type could not be employed—but was a mixture of sedge and Hypnum peats;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public, who understand the term "peat moss" to indicate the preferred moss peat derived from Sphagnum moss, with respect to the character and properties of said product, thereby inducing purchase thereof:

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

Before *Mr. Andrew B. Duval*, trial examiner.

Mr. James I. Rooney and *Mr. Randolph W. Branch* for the Commission.

Cutler & Males, of New York City, 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 Trade Commission, having reason to believe that Gaetano Rossitto, hereinafter referred to as respondent, has violated the provisions of the said act, and its 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, Gaetano Rossitto, is an individual doing business under the trade name, Empire Peat Soil Sponge Co., with his principal office and place of business located at 2 Lafayette Street, New York, N. Y.

PAR. 2. Said respondent is now and for more than one year last past has been engaged in the mining, and in the sale and distribution of