

IN THE MATTER OF
**JOHN C. LUCAS, TRADING AS FOX STUDIOS, AND
FORMERLY TRADING AS UNITED STUDIOS, 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 4807. Complaint, Aug. 10, 1942—Decision, Nov. 3, 1943

A drawing is a representation produced by the art of drawing, and a painting is a likeness, image or scene depicted with paints without the aid of photography, a water color being a painting with pigments for which water and not oil is used as a solvent, and an oil painting being a painting done by hand with brushes and plastic oil colors on canvas, or other materials, without the aid of photography.

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.

Where an individual trading as "United Studios" and "Fox Studios" and his associate, engaged in interstate sale and distribution of photographs and, particularly, tinted or colored enlargements and miniatures thereof, in competition with others similarly engaged and with those engaged in the sale of genuine original paintings; contacting customers and prospective customers through newspaper advertising and through house-to-house salesmen canvassing various towns in crews, supplied with attractive samples of said individuals' work and with order coupons displaying aforesaid trade name "Fox Studios," and obtaining signatures to contracts for photographs—

- (a) Falsely represented that the tinted or colored photographs and the tinted enlargements or miniatures made therefrom, were "portraits in oil," "oil paintings," "oil portraits," "hand paintings," "hand colored paintings," or "paintings" through so describing them in order blanks, advertisements in newspapers, price lists, and representations employed by their canvassers;
- (b) Represented as the customary prices for their said pictures, prices which were in excess of those at which they were customarily offered, through salesmen's representations or statements in certificates that said so-called paintings, etc., were of a "\$7.50 value" or "\$5.00 value," etc.; represented that said pictures were being sold as "special introductory offers," "special opening bargains," "special Easter values," "Mother's Day specials" or at a reduced price for a limited time and to a limited number of customers; and, in soliciting from those who had already placed orders, sale of additional photographs at higher prices, represented through said salesmen that they could not make any money unless additional orders were given and would be forced out of business since the original offer was at less than cost or at the "special" offer price.

The facts being that photographs in question were of the sort ordinarily sold by popular price coupon photographic studios for \$1.00 each, and their aforesaid "special introductory" offers, etc., were not limited or special, but comprised part of a continuous scheme of solicitation in the regular course of their business;

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(c) Represented falsely that they employed in their studio photographers from Hollywood who had there acquired experience and proficiency as motion picture photographers, and that their lighting effects were those used in motion picture photography, through such statements in newspaper advertisements as "Fox Studio Has Hollywood Cameramen"; "By Utilizing the Very Latest in Hollywood Lighting Effects Fox Is Able to Make Pictures to Suit Personalities"; "Howard Sheld, recent arrival from Hollywood, one of the most popular motion-picture photographers of that city * * *" and pictures taken with Hollywood lightings"; and

(d) Referred in price lists and in salesmen's talks to their products as "Gold Tone Oil Painting" and "Goldtone Vignetted Oil Paintings";

The facts being their said product was not the genuine "Goldtone" print resulting from the more laborious and expensive process involving use of a toning bath employing salts or chloride of gold and resulting in a much warmer tone than in the case of the black-and-white or sepia, but was the much less costly sepia print, slightly tinted, and the toning process employed was an ordinary one in universal use in the production of sepia effects;

With the result of misleading and deceiving the purchasing public and inducing it to purchase said products under such mistaken belief, thereby unfairly diverting trade to them from their competitors who truthfully represent their products; to the substantial injury of competition in commerce:

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

Mr. Randolph W. Branch for the Commission.

Mr. Fred M. Taylor, of Boise, Idaho, for John C. Lucas and Isla Fineman Lucas.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by authority vested in it by said act, the Federal Trade Commission, having reason to believe that John C. Lucas, individually, and trading as Fox Studios, and formerly trading as United Studios, and Saul C. Fineman, Isla Fineman Lucas, Harry Becko, Howard Sheld, Harvey Grastey, Dick Sperling, and Nicholas Mock, individuals, hereinafter designed 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, John C. Lucas, formerly trading as United Studios, is an individual, now trading as Fox Studios, with his principal office and place of business located at 915 Main Street, Boise, Idaho. The resident or business addresses of the remaining individual respondents, so far as known to the Commission, are as

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follows: Saul C. Fineman, 915 Main Street, Boise, Idaho; Isla Fineman Lucas, 915 Main Street, Boise, Idaho; Harry Becko, 915 Main Street, Boise, Idaho; Howard Sheld, 915 Main Street, Boise, Idaho; Harvey Grastey, 915 Main Street, Boise, Idaho; Dick Sperling, 915 Main Street, Boise, Idaho; and Nicholas Mock, 915 Main Street, Boise, Idaho. These respondents are associated with and representatives of John C. Lucas, formerly trading as United Studios, and now trading as Fox Studios.

All of said respondents are engaged in the sale and distribution of photographs, and particularly tinted or colored enlargements and miniatures of photographs.

Respondents sell and distribute such products to customers located in various States of the United States and cause and have caused said products, when sold, to be transported from their place of business in Idaho to purchasers thereof located in various States of the United States other than the State of Idaho, and in the District of Columbia.

PAR. 2. In the course and conduct of their said business, respondents have been, and are now, engaged in direct and substantial competition with various corporations, partnerships and individuals also engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia, of photographs and tinted or colored enlargements and miniatures of photographs, and with corporations, partnerships, and individuals engaged in the sale of genuine original paintings, including oil 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 three years last past, acting under the control and direction of respondent, John C. Lucas, have entered into and carried out various understandings, agreements, combinations and conspiracies with each other and with divers other persons whose names are to the Commission unknown, to sell photographs, including tinted or colored enlargements and miniatures of photographs to the purchasing public by and through the use of false, misleading and deceptive acts, methods and practices.

PAR. 4. In the course and conduct of said business of producing, selling and distributing photographs and colored or tinted enlargements and miniatures of photographs, respondent, John C. Lucas, directs and controls the policies, affairs and activities of the business conducted under the name of Fox Studios and exercises a substantial measure of direction and control over the organization, management, policies, operation and financing of the remaining respondents herein

in carrying out the unfair methods of competition and the unfair and deceptive acts and practices alleged herein.

PAR. 5. In the course and conduct of their said business and for the purpose of inducing the sale and distribution of their said products in commerce, as described herein, respondents have made, and are now making various advertising and sales representations concerning their said products. Customers and prospective customers are contacted variously through the medium of newspaper advertising, by the use of United States mails and by house-to-house canvassers or sales agents operating from and under the direction of the said Fox Studios.

PAR. 6. Respondents' plan of operation is in substance as follows:

House-to-house salesmen or canvassers, each group or crew being in charge of a crew manager, go out into various cities and towns located in States other than the State of Idaho. All such salesmen are equipped with attractive samples of respondents' work and with various types of coupons to be used in obtaining orders for respondents' products. Said crews, after locating in a town, canvass the same and obtain signatures to contracts for photographs or pictures. The customer signing for a picture pays 50 cents or other initial sum to the manager of a sales or canvassing crew. After a crew has worked a town they transmit to Fox Studios a list of the names and addresses of the customers obtained, the amount paid by each customer, and a statement of the work to be done. The crew then moves on to the next town. Respondent, Lucas, follows said canvassing crews, contacts those customers who have made contracts for pictures, collects the balance due from each customer, takes the customer's picture, then moves on to the next town. Negatives for the pictures thus taken by respondent, John C. Lucas, are sent in to the Fox Studios in Boise, where unfinished prints therefrom are made. When the prints are ready, respondent, Lucas, again visits the towns in question, again contacts the customers who have signed contracts and attempts to obtain additional business from them. When the customer completes the payment on his contract, the prints, with instructions as to coloring or finishing, are sent back to Fox Studios. When the pictures are finally completed, they are mailed out from Fox Studios in Boise, Idaho, to the respective purchasers in other States than the State of Idaho.

In visiting the homes of customers and prospective customers in the course and conduct of their said business, and acting under the direction and at the instance of respondent, John C. Lucas, respondents induce prospective customers to pay 50 cents on the purchase price of a picture and to execute an order therefor which entitles the customer

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to one "7 x 11 beautiful oil colored photograph" to be taken at a place to be designated later and upon the payment at that time of an additional 48 cents. At various times similar offers are made at different prices. Purchasers of such photographs are led to believe that they are contracting or dealing with duly constituted agents or representatives of an association of artists organized under the name and known as, "Fox Studios." Each said respondent is furnished by said respondent Lucas with various identification cards and price lists. Respondent, John C. Lucas, causes the orders or contracts for pictures or paintings to be taken on printed forms provided by him bearing the name and address of "Fox Studios," across the top thereof, and in such order it is variously stated that the customer is entitled to a "beautiful oil colored portrait" or "beautiful oil colored photograph" or "oil colored true-tone photograph." The said order is duly signed by one of the respondents herein as "representative" on a line provided therefor and delivered to the customer.

Said order blanks, used by respondents under the trade name "Fox Studios," contain various statements and representations, of which the following are typical:

This offer expires in 10 days after date of purchase;

Only One Offer To a Family;

Latest Modernistic Lighting Used On All Sittings;

One 7 x 11 Beautiful Oil Colored Photograph * * * Special 98¢ Only.

The prospective purchaser is told and impressed with the fact that the order which he has executed entitles him to a photograph or painting at a "special offer" price or at a "cost of production" price or at a "reduced" price. Respondents particularly call attention to the high grade of the work done, to its beauty, the finish and to the natural color produced of the hair, eyes, complexion, and clothing. The pictures produced by respondents are represented and referred to by respondents' salesmen and canvassers as "paintings," "oil paintings," "oil portraits," "hand paintings," and "hand painted portraits," and are represented as being of "\$7.50 value" or "\$5.00 value" or similar amounts.

Subsequent to the down payment of 50 cents for the order the prospective customer is notified of the date on which a sitting for a photograph will be held. The prospective purchaser reports to the designated place, which is usually a temporary hotel room or an auto camp and upon the payment of the additional sum of 48 cents the photograph is taken. At this time considerable pressure is placed upon the prospective customer to order additional photographs of the same or larger size and in greater numbers than one, and prices stated therefor are considerably higher than the price of the original

offer. Respondents represent at this time that they cannot make any money unless additional orders are given, and that if the customer only takes one photograph the respondent will be forced out of business, since the original offer is given at less than cost or at the "special offer" price.

Respondents inform the prospective purchaser that the completed "painting" finished by the respondent will be of the grade, type, and quality of samples exhibited and will fully conform to the representations made.

Delivery of pictures or "paintings" is made by shipping the completed product c. o. d. directly to the customer or by personal delivery of a "follow-up" salesman or representative. If the delivery is made in person, additional orders are attempted by means of the same representations used at the sitting.

PAR. 7. On other occasions respondents insert advertisements in the various newspapers circulating in States other than the State of Idaho. Said advertisements represent that any customer who presents one of these advertisements at the studio is entitled to a "Beautiful 6 x 8 hand colored hand painting for only 48¢." Respondents represent that this offer is for the purpose of advertising and introducing the Fox Studios to the public. At various other times similar offers are made at different prices. Typical among the statements made in these advertisements are the following:

"Special opening bargain good only for one week"; "A beautiful 6 x 8 hand painting"; "Special—This Week Only * * * a beautiful 8 x 10 oil painting * * * Hollywood motion picture lighting used"; "Special Easter Value"; "Mother's Day Special"; "Hand Colored Painting."

In special news write-ups appearing as advertisements in daily papers circulating in States other than the State of Idaho there have appeared the following, among other statements and representations:

"Fox Studio Has Hollywood Cameramen"; "By Utilizing the Very Latest in Hollywood Lighting Effects Fox Is Able to Make Pictures to Suit Personalities"; "Howard Sheld, recent arrival from Hollywood, one of the most popular motion picture photographers of that city * * *" and "pictures taken with Hollywood lighting."

In other certificates employed by the said respondent, John C. Lucas, trading as United Studios, or otherwise, pictures offered and sold by him in commerce as herein described have been represented respectively as being a "Special Advertising Offer"; as having values of \$7.50 and \$5; as produced by "Hollywood Lightings," and as being a " * * * Beautiful Oil Colored Portrait."

In price lists distributed by respondents to customers and prospective customers and in sales talks by respondents' salesmen and can-

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vassers, respondents' products are described and represented as "Gold Tone Oil Paintings" and "Goldtone Vignetted Oil Paintings."

PAR. 8. The aforesaid false and misleading statements, representations, acts, practices and methods employed by the respondents in connection with the conduct of their business enterprise, as aforesaid, are not all inclusive, but are merely illustrative of the character and type of statements, representations, acts, practices and methods used by respondents to mislead and deceive members of the purchasing public, and to induce the purchase of their said products.

PAR. 9. A drawing is a representation produced by the art of drawing; a work of art produced by pen, pencil or crayon. The pastel, in art, is a colored crayon made of pigments ground with chalk and compounded with water into a sort of paste. A drawing made with a colored chalk or crayon is called a pastel, as in 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 and plastic oil colors on canvas; or other materials, without the aid of photography.

PAR. 10. The aforesaid representations and implications made and employed by respondents as aforesaid, are false, misleading, and deceptive in that:

The photographs or pictures produced and distributed by respondents are not "portraits in oil," "oil paintings," "oil portraits," "hand paintings" or "hand colored paintings." Said photographs or pictures are not "paintings" nor "oil painted," they do not conform to the established belief of the public as to what constitutes a "painting" or an "oil painted" production, nor do said photographs or pictures constitute "paintings" or "oil painted" products as understood by artists who paint pictures or photographers who color photographs. Respondents' said photographs or pictures, in truth and in fact, as produced and sold by them, are merely sepia prints produced from a photographic base and negative, and slightly tinted or colored thereafter.

The photographs or pictures represented as having values of \$7.50 and \$5 have not had and do not have any such values, and have not been sold for \$7.50 nor for \$5, for in truth and in fact, photographs or pictures of the same kind, type and quality as those sold by respondents are regularly and ordinarily sold by popular-price, coupon photographic studios for \$1 each.

The offers that are advertised as terminating on or being limited to a given date or period, are not actually terminated or withdrawn at, or limited to, the time stated as to each, nor are any of said advertising or coupon offers "Special Introductory Offers," "Special Opening Bargains," "Special Easter Values" or "Mother's Day Specials." Said offers, in truth and in fact, comprise only a part of a continuous scheme of solicitation in the regular course and conduct of the business of respondents.

Respondents do not employ, and have not employed "Hollywood Cameramen," nor is respondent, Howard Sheld, a "recent arrival from Hollywood," or "one of the most popular motion picture photographers of the city." Pictures taken by respondents are not and have not been taken with any so-called "Hollywood lighting effects," but, on the contrary, constitute the ordinary photographs, slightly tinted or colored, made by the average photographic studio employing a coupon selling plan.

PAR. 11. A genuine "Goldtone" print or picture is a product resulting from a process involving the use of a toning bath employing salts or chloride of gold. The process produces a much warmer tone than is true in the case of black and white or sepia, involves more labor and detail, comprehending the toning of a print or pictures a second time, and is considerably more expensive than the process employed in the production of black-and-white or sepia prints or pictures. The toning process employed by respondents is an ordinary one in universal use in the production of sepia effects.

In truth and in fact, the colored photograph advertised and represented by respondents to be a "Goldtone Oil Painting" or "Goldtone Vignetted Oil Painting" is not in fact a Goldtone picture but is instead a slightly tinted or colored sepia print which costs much less to produce and which respondents do not actually color or paint in oil.

PAR. 12. Each of said respondents herein has acted and does act in concert and cooperation with one or more of the other respondents herein in doing and performing the acts and practices herein alleged and in furtherance of said understandings, agreements, combinations and conspiracies.

PAR. 13. The use by the respondents of the aforesaid false and misleading representations, acts and practices in the sale and offering for sale 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 por-

traits or paintings 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 also engaged in the sale and distribution of tinted or colored enlargements or miniatures of 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 14. The aforesaid acts and practices of respondents, including said understandings, agreements, combinations, and conspiracies, and the things done thereunder and pursuant thereto and in furtherance thereof, as hereinabove alleged, are all to the prejudice and injury of the public and of respondents' competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 10, 1942, issued its complaint charging John C. Lucas, Saul C. Fineman, Isla Fineman Lucas, Harry Backo, Howard Sheld, Harvey Grastey, Dick Sperling, and Nicholas Mock 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 said act. Said complaint was duly served on respondents, John C. Lucas, Isla Fineman Lucas, and Saul C. Fineman, but no service of said complaint was effected as to respondents, Harry Becko, Howard Sheld, Harvey Grastey, Dick Sperling, and Nicholas Mock. Thereafter, on August 4, 1943, the Commission permitted respondents, John C. Lucas and Isla Fineman Lucas, to file their answer dated June 22, 1943, in which said answer respondents admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to the facts. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint and the answer of the respondents, John C. Lucas and Isla Fineman Lucas, 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 as to said answering respondents.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, John C. Lucas, is an individual, who, prior to about September 1, 1942, traded first under the name United Studios and thereafter the name Fox Studios with his last principal office and place of business at 915 Main Street, Boise, Idaho. Respondent, Isla Fineman Lucas, was associated with him in the enterprise described herein.

Said respondents were engaged in the sale and distribution of photographs, and particularly tinted or colored enlargements and miniatures of photographs. Respondents sold and distributed such products to customers located in various States of the United States and caused said products, when sold, to be transported from their place of business in Idaho to purchasers thereof located in various States of the United States other than the State of Idaho, and in the District of Columbia.

PAR. 2. In the course and conduct of their said business, respondents were 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 photographs and tinted or colored enlargements and miniatures of photographs, and with corporations, partnerships, and individuals engaged in the sale of genuine original paintings, including oil 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. In the course and conduct of their said business and for the purpose of inducing the sale and distribution of their said products in commerce, as described herein, respondents have made various advertising and sales representations concerning their said products. Customers and prospective customers were contacted variously through the medium of newspaper advertising, by the use of the United States mails and by house-to-house canvassers or sales agents operating from and under the direction of the said Fox Studios.

PAR. 4. Respondents plan of operation was in substance as follows: House-to-house salesmen or canvassers, each group or crew being in charge of a crew manager, went out into various cities and towns located in States other than the State of Idaho. All such salesmen were equipped with attractive samples of respondents' work and with various types of coupons to be used in obtaining orders for respondents' products. Said crews, after locating in a town, canvassed the same and obtained signatures to contracts for photographs or pic-

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tures. The customer signing for a picture paid 50 cents or other initial sum to the manager of a sales or canvassing crew. After a crew had worked a town they transmitted to Fox Studios a list of the names and addresses of the customers obtained, the amount paid by each customer, and a statement of the work to be done. The crew then moved on to the next town. Respondent, Lucas, followed said canvassing crews, contacted those customers who had made contracts for pictures, collected the balance due from each customer, took the customer's picture, then moved on to the next town. Negatives for the pictures thus taken by respondent, John C. Lucas, were sent in to the Fox Studio in Boise, where unfinished prints therefrom were made. When the prints were ready, respondent Lucas again visited the towns in question, again contacted the customers who had signed contracts and attempted to obtain additional business from them. When the customer completed the payment on his contract the prints, with instructions as to coloring or finishing, were sent back to Fox Studios. When the pictures were finally completed, they were mailed out from Fox Studios in Boise, Idaho, to the respective purchasers in other States than the State of Idaho.

In visiting the homes of customers and prospective customers in the course and conduct of their said business, and acting under the direction and at the instance of respondent, John C. Lucas, respondents' salesmen or canvassers induced prospective customers to pay 50 cents on the purchase price of a picture and to execute an order therefor which entitled the customer to one "7 x 11 beautiful oil colored photograph" to be taken at a place to be designated later and upon the payment at that time of an additional 48 cents. At various times similar offers were made at different prices. Purchasers of such photographs were led to believe that they were contracting or dealing with duly constituted agents or representatives of an association of artists organized under the name and known as, "Fox Studios." Said salesmen were furnished by said respondents with various identification cards and price lists. Respondent, John C. Lucas, caused the orders or contracts for pictures or paintings to be taken on printed forms provided by him bearing the name and address of "Fox Studios" across the top thereof, and in such order it was variously stated that the customer was entitled to a "beautiful oil colored portrait" or "beautiful oil colored photograph" or "oil colored true-tone photograph." The said order was duly signed by one of the salesmen of the respondent herein as "representative" on a line provided therefor, and delivered to the customer.

Said order blanks contained various statements and representations of which the following are typical:

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This offer expires in 10 days after date of purchase;

Only One Offer to a Family;

Latest Modernistic Lighting Used On All Sittings;

One 7x11 Beautiful Oil Colored Photograph * * * Special 98¢ Only.

The prospective purchaser was told and impressed with the fact that the order which he had executed entitled him to a photograph or painting at a "special offer" price or at a "cost of production" price or at a "reduced" price. Respondents particularly called attention to the high grade of the work done, to its beauty, the finish, and to the natural color produced of the hair, eyes, complexion and clothing. The pictures produced by respondents were represented and referred to by respondents' salesmen and canvassers as "paintings," "oil paintings," "oil portraits," "hand paintings," and "hand painted portraits," and were represented as being of "\$7.50 value" or "\$5.00 value" or similar amounts.

Subsequent to the down payment of 50 cents for the order the prospective customer was notified of the date on which a sitting for a photograph would be held. The prospective purchaser reported to the designated place, usually a temporary hotel room or an auto camp, and upon the payment of the additional sum of 48 cents the photograph was taken. At this time considerable pressure was placed upon the prospective customer to order additional photographs of the same or larger size and in greater numbers than one, and prices stated therefor were considerably higher than the price of the original offer. Respondents represented at that time that they could not make any money unless additional orders were given, and that if the customer only took one photograph the respondent would be forced out of business, since the original offer was given at less than cost or at the "special offer" price.

Respondents informed the prospective purchaser that the completed "painting" finished by the respondent would be of the grade, type, and quality of samples exhibited and would fully conform to the representations made.

Delivery of pictures or "paintings" was made by shipping the completed product c. o. d. directly to the customer or by personal delivery of a "follow-up" salesman or representative. If the delivery was made in person, additional orders were attempted by means of the same representations used at the sitting.

PAR. 5. On other occasions respondents inserted advertisements in the various newspapers circulating in States other than the State of Idaho. Said advertisements represented that any customer who presented one of these advertisements at the studio was entitled to a "Beautiful 6 x 8 hand colored hand painting for only 48¢." Re-

spondents represented that this offer was for the purpose of advertising and introducing the Fox Studios to the public. At various other times similar offers were made at different prices. Typical among the statements made in these advertisements were the following:

"Special opening bargain good only for one week"; "A beautiful 6 x 8 hand painting"; "Special—This Week Only * * * a beautiful 8 x 10 oil painting * * * Hollywood motion picture lighting used"; "Special Easter Value"; "Mother's Day Special"; "Hand Colored Painting."

In special news write-ups appearing as advertisements in daily papers circulating in States other than the State of Idaho there have appeared the following, among other statements and representations:

"Fox Studio Has Hollywood Cameramen"; "By Utilizing the Very Latest in Hollywood Lighting Effects Fox Is Able to Make Pictures to Suit Personalities"; "Howard Sheld, recent arrival from Hollywood, one of the most popular motion picture photographers of that city * * *" and "pictures taken with Hollywood lighting."

In other certificates employed by the said respondent, John C. Lucas, trading as United Studios or otherwise, pictures offered and sold by him in commerce as herein described were represented respectively as being a "Special Advertising Offer"; as having values of \$7.50 and \$5; as produced by "Hollywood Lightings," and as being a "* * * Beautiful Oil Colored Portrait."

In price lists distributed by respondents to customers and prospective customers and in sales talks by respondents' salesmen and canvassers, respondents' products were described and represented as "Gold Tone Oil Paintings" and "Goldtone Vignetted Oil Paintings."

PAR. 6. The aforesaid false and misleading statements, representations, acts, practices and methods employed by the respondents in connection with the conduct of their business enterprise, as aforesaid, are not all inclusive, but are merely illustrative of the character and type of statements, representations, acts, practices, and methods used by respondents to mislead and deceive members of the purchasing public, and to induce the purchase of their said products.

PAR. 7. A drawing is a representation produced by the art of drawing; a work of art produced by pen, pencil, or crayon. The pastel, in art, is a colored crayon made of pigments ground with chalk and compounded with water into a sort of paste. A drawing made with a colored chalk or crayon is called a pastel, as is also the art of drawing with colored crayons. A painting is a likeness, image, or scene depicted with paints without the aid of photography. A water color is a painting with 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 and plastic oil colors on canvas, or other materials, without the aid of photography.

PAR. 8. The aforesaid representations and implications made and employed by respondents as aforesaid were false, misleading and deceptive in that:

The photographs or pictures produced and distributed by respondents were not "portraits in oil," "oil paintings," "oil portraits," "hand paintings" or "hand colored paintings." Said photographs or pictures were not "paintings" nor "oil painted," they did not conform to the established belief of the public as to what constitutes a "painting" or an "oil painted" production, nor did said photographs or pictures constitute "paintings" or "oil painted" products as understood by artists who paint pictures or photographers who color photographs. Respondents' said photographs or pictures, in truth and in fact, as produced and sold by them, were merely sepia prints produced from a photographic base and negative, and slightly tinted or colored thereafter.

The photographs or pictures represented as having values of \$7.50 and \$5 did not have any such values, and were not sold for \$7.50 nor for \$5, for in truth and in fact photographs or pictures of the same kind, type, and quality as those sold by respondents were regularly and ordinarily sold by popular price, coupon photographic studios for \$1 each.

The offers that were advertised as terminating on or as being limited to a given date or period, were not actually terminated or withdrawn at, or limited to, the time stated as to each, nor were any of said advertising or coupon offers "Special Introductory Offers," "Special Opening Bargains," "Special Easter Values" or "Mother's Day Specials." Said offers, in truth and in fact, comprised only a part of a continuous scheme of solicitation in the regular course and conduct of the business of respondents.

Respondents did not employ, and have not employed "Hollywood Cameramen," nor was respondent, Howard Sheld, a "recent arrival from Hollywood," or "one of the most popular motion picture photographers of the city." Pictures taken by respondents were not taken with any so-called "Hollywood lighting effects," but, on the contrary, constituted the ordinary photographs, slightly tinted or colored, made by the average photographic studio employing a coupon selling plan.

PAR. 9. A genuine "Goldtone" print or picture is a product resulting from a process involving the use of a toning bath employing salts

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or chloride of gold. This process produces a much warmer tone than is true in the case of black and white or sepia, involves more labor and detail, comprehending the toning of a print or pictures a second time, and is considerably more expensive than the process employed in the production of black-and-white or sepia prints or pictures. The toning process employed by respondents was an ordinary one in universal use in the production of sepia effects.

In truth and in fact, the colored photograph advertised and represented by respondents to be a "Goldtone Oil Painting" or "Goldtone Vignetted Oil Painting" was not in fact a Goldtone picture but was instead a slightly tinted or colored sepia print which cost much less to produce and which respondents did not actually color or paint in oil.

PAR. 10. 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 had the tendency and capacity to and did mislead and deceive the purchasing public concerning the quality and value of respondents' products sold as herein described, and thereby induced the purchasing public to purchase said products under the erroneous and mistaken belief that the same were high-grade, quality portraits or paintings of exceptional value. The use by respondents of the aforesaid acts and practices had a tendency and capacity to and did unfairly divert trade to respondents from their competitors also engaged in the sale and distribution of tinted or colored enlargements or miniatures of 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 by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondents, as hereinabove found, were all to the prejudice and injury of the public and of respondents' competitors, and constituted 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, and the answer of John C. Lucas and Isla Fineman Lucas, in which answer said respondents

admit all the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearing as to the facts, and the Commission having made its findings as to the facts and conclusion that said respondents, John C. Lucas and Isla Fineman Lucas, have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents, John C. Lucas, individually, and trading as Fox Studios or United Studios, or trading under any other name, and Isla Fineman Lucas, their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of photographs, including tinted or colored photographs and enlargements or miniatures thereof in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or by implication that tinted or colored photographs, including tinted or colored enlargements or miniatures made from a photographic base, are "Portraits in Oil," "Oil Paintings," "Oil Portraits," "Hand Paintings," "Hand Colored Paintings," or "Paintings," or that respondents' said products are works of art produced by the skill and brush of a painter.

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

3. Representing that pictures being sold in the regular course of business at the usual and customary prices therefor are being or will be sold only to a limited number of customers or as "Special Introductory Offers," "Special Opening Bargains," "Special Easter Values," as "Mother's Day Specials" or at a "reduced price" or that the offer expires on any given date, or in any other manner representing that a purchaser is receiving an advantage in price or other consideration not ordinarily available.

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

5. Representing that respondents have employed in their studio photographers from Hollywood, Calif., who have acquired experience and proficiency as motion picture photographers in said city, or that the lighting effects employed by respondents in their studio are those used in motion picture photography.

6. Using the expression "Goldtone" alone or in conjunction with any other word or words, to describe, designate or indicate any sepia or

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other finish picture which is not the result of a toning or developing bath or process employing chloride of gold salts.

It appearing that respondents, Harry Becko, Howard Sheld, Harvey Grastey, Dick Sperling, and Nicholas Mock, have not been served with the complaint and respondent, Saul C. Fineman, has not been served with notice of hearing, *It is ordered*, That the proceeding be, and the same hereby is, closed without prejudice to the right of the Commission to reopen the same as to said respondents.

It is further ordered, That said respondents, John C. Lucas and Isla Fineman Lucas, shall within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Syllabus

IN THE MATTER OF

EVENING DRESS GUILD, 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 4751. Complaint, Apr. 22, 1942—Decision, Nov. 16, 1943*

Where eleven corporations, a partnership and an individual, members of a corporate "Guild" (later dissolved), doing a substantial volume of the whole of the business—particularly in the metropolitan area surrounding New York City—of the manufacture and interstate sale and distribution of popular priced women's and misses' formal evening dresses in competition with one another, except as below set forth, and with others;

Entered into, maintained, and carried out agreements and understandings between and among themselves to suppress competition in said business; and

In pursuance of said agreements, etc., and to make them effective, concertedly—

- (1) Organized said Guild to control and regulate their business;
- (2) Fixed and maintained prices and terms and conditions of sale in connection with the marketing of their said merchandise;
- (3) Attended meetings held from time to time under the auspices of said Guild, at which the prices of their said merchandise to retail dealer customers were increased; and
- (4) Adopted also under said Guild auspices, trade practice rules forbidding certain trade deductions and allowances to their customers which they had theretofore permitted;

Capacity, tendency and effect of which agreements, etc., and acts performed in pursuance thereof, were unreasonably to suppress and restrain competition in the sale and distribution of said articles of merchandise in commerce and to deprive the public of the full benefit of competition therein;

Held, That said acts and practices, under the circumstances set forth, were all to the prejudice of the public, had a dangerous tendency to and did actually restrain and eliminate price competition in the sale and distribution of formal evening dresses in commerce; placed in their hands power to control and enhance prices; unreasonably restrained such commerce in formal evening dresses; and constituted unfair acts and practices in commerce and unfair methods of competition therein.

Mr. George W. Williams for the Commission.

Mr. Lawrence I. Gerber, of New York City, for Harry Goodman, Herman Goodman, and Joseph Scafuri.

Mr. Herman Haines, of New York City, for Murray E. Gottesman, Meyer Schatzberg, Jack Levy, Mike Reiter, Clover Dance Frocks, Inc., Debonair Dance Frocks, Inc., Gaytime Frocks, Inc., Hollywood Formals, Inc., Patio Dress Co., Inc., Penelope Frocks, Inc., Seville Dress Manufacturing Co., Inc., Studio Dance Frocks, Inc., and S. Wicha, Inc.