

Syllabus

IN THE MATTER OF
DAVID JACOBS AND ALLIED NEWS-PHOTO SERVICE
CORP., ETC.

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

Docket 4884. Complaint, Dec. 31, 1942—Decision, Nov. 4, 1944

Where an individual and a corporation controlled by him, engaged in interstate sale and distribution of photographs and "Goldtone Miniatures" made therefrom, through the mails and salesmen whom they supplied with purported "Press Cards" which contained such matter as "To Police Department: Please extend every reasonable courtesy essential to the bearer," "Issued to" (followed by provision for "Signature of Bearer"), set forth their trade name "Allied News Photographic Service, 439 Madison Avenue, New York City," followed by the words "London, Paris, Berlin," contained a blank for the insertion of the name of a person as "General Manager," and set forth such other matter as might be expected to be contained on such a card, followed by provisions for bearer's description and the words "Not Transferable"—

(a) Represented, directly or by implication, through use of corporate name "Allied News Photo Service Corporation," and trade names "Globe Press-Photo Service" and "Allied News Photographic Service," which were brought to the attention of prospects orally by their salesmen, by mailing envelopes sent to prospects, and by the display of aforesaid cards with which they supplied their salesmen, that they were in the business of obtaining photographs of persons of public interest for the press, throughout the United States; that such photographs were desired by them because of their news value; that newspapers desiring photographs of prospective subjects, would obtain said photographs from them; and that they were news or press photographers or photographic agencies as distinguished from portrait photographers;

The facts being that they did not conduct a news or press photographic agency and had no regular connection with any such, nor did they, except in rare instances, furnish them with photographs; but were engaged in the business of making photographs and "Goldtone Miniatures" and selling them to individual private customers;

(b) Represented falsely, directly and by implication, through the use of the aforesaid cards and statements by their agents, that the persons who carried said cards were accredited representatives of a recognized news photographic service or agency to whom, in the course of their work, police authorities frequently accorded opportunities to photograph current events not accorded to others; and that they had offices or agencies or representatives in London, England; Paris, France; and Berlin, Germany;

(c) Represented to prospects directly and by implication, through their representatives and salesmen, that photographs were desired in order that prints might be available in the event that the press desired them for publication, and that many newspapers obtained such photographs from them;

When in fact they desired to take photographs in order that they might receive orders therefor and for "Goldtone Miniatures" made therefrom, from the subjects thereof; and they were not, except in very rare instances, a source of supply for photographs to newspapers;

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- (d) Represented also that they were "official photographers" for, or were connected with, particular newspapers and were obtaining photographs for such newspapers, by means of statements of their representatives and salesmen and by the display of letters containing such statements, on the letterheads of such newspapers, which they had secured from them;

The facts being they had no connections with said newspapers and were not obtaining photographs for them, except that they did supply to each one print of each photograph taken in the community in which such newspaper was located, as consideration for the giving by said newspaper of the letter referred to above; and

- (e) After taking photographs of those who had consented thereto, and submitting proofs thereof to such persons, in an endeavor to sell to said persons prints and later, "Goldtone Miniatures" made therefrom, represented, in letters sent to said persons, that they had on hand completed "Goldtone Miniatures" of such persons; that such miniatures had been made for purposes of display at an exhibition as especially fine examples of their art and workmanship; that said exhibition had been concluded and many of the miniatures there displayed by them had been purchased by the persons whom they portrayed; that unless the said individuals purchased the said miniatures they would be dismantled or used by their salesmen as examples of their workmanship; and that although the regular or usual price at which such miniatures were sold by them was \$75.00, said individuals might purchase them at a special or reduced price of \$12.50;

The facts being they never displayed any miniatures at any "exhibition" in any accepted sense of the word, but merely from time to time hung some few on the walls of their place of business; only in rare instances did they even have miniatures of the individuals to whom such letters were sent, since usually such miniatures were made only after they had been ordered; and the price of \$12.50 quoted by them was not special or reduced but was their regular and usual selling price;

With the effect of misleading and deceiving a substantially large number of the purchasing public into the erroneous belief that said representations were true, and thereby into the purchase of substantial numbers of their said photographs and miniatures, and with capacity and tendency so to do:

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

Mr. Randolph W. Branch for the Commission.

Mr. Boris Marcus, of New York City, for respondents.

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 David Jacobs, an individual, and Allied News-Photo Service Corporation, a corporation, also trading under the names, Allied News Photographic Service, Shelburne Studios, Shelburne Co., Miniature Gallery of New York and Globe Press-Photo Service, 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, David Jacobs, is an individual, with an office and principal place of business at 439 Madison Avenue, city and State of New York; respondent, Allied News-Photo Service Corporation, is a corporation, organized under the laws of the State of New York, with an office and principal place of business at 439 Madison Avenue, city and State of New York. Respondent, Jacobs, holds all the offices in said corporation and is now, and at all times mentioned herein has been, in control of the management, policies and operation thereof, particularly in respect to the acts and practices herein alleged. Said respondents trade under the names, Allied News Photographic Service, Shelburne Studios, Sehlburne Co., Miniature Gallery of New York, and Globe Press-Photo Service.

PAR. 2. Respondents are now, and have been for more than two years last past, engaged in the business of making photographs of persons, and selling and distributing said photographs and "Goldtone Miniatures" made therefrom. Respondents cause said photographs and miniatures, when sold, to be transported from their aforesaid place of business in the State of New York to purchasers thereof in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said photographs and miniatures 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 securing permission to take said photographs as a necessary preliminary to inducing the purchase thereof, respondents have made, and caused to be made, false and misleading statements and representations with respect to the identity, nature and character of their business, to prospective subjects for and purchasers of said photographs and miniatures.

PAR. 4. Through the use of the names, "Allied News-Photo Service Corporation," "Globe Press-Photo Service" and "Allied News Photographic Service" respondents have represented, directly and by implication, to prospective subjects for photographs, that they are in the business of obtaining photographs of persons whose photographs are or may be of interest to the public for the press, i.e., for newspapers, magazines and other periodicals published throughout the United States; that such photographs are desired by respondents because of their present or prospective news value; that respondents are connected with newspapers in such a fashion that in the event that such papers desire photographs of such prospective subjects, they would obtain them from respondents and that the said respondents are news or press photographers or photographic agencies as distinguished from portrait photographers.

The said names are brought to the attention of prospective subjects, and subjects, orally by respondents' salesmen, by the use of mailing envelopes sent to prospective purchasers of photographs and by the display of cards with which respondents supply their salesmen and representatives. Said cards are substantially in the following form:

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.....
 To Police Department:

Please extend every reasonable
 courtesy essential to the bearer

Issued to

Signature of Bearer

Authorized as Staff Photographer.....

PRESS PASS

Allied News

Photographic Service

439 Madison Avenue B. Gordon

New York City

General Manager

London

Paris

Berlin

.....

CONDITIONS

The holder hereof in accepting this card, assumes all risk of injury or accident and damage to person or property incident to the use thereof.

The bearer agrees to abide by any reasonable direction of a Police officer or a member of the Fire Dept.

.....
 Weight Eyes Hair Height Age

NOT TRANSFERABLE

PAR. 5. The aforesaid representations were deceptive and untrue. In truth and in fact, respondents do not conduct a news or press photographic agency but are engaged in the business of making portrait photographs and Goldtone Miniatures and selling them to individual private customers. Respondents have no regular connection with any newspaper or news gathering or news disseminating agency, nor do they, except in rare instances, furnish photographs to newspapers or to such agencies. Respondents seek permission to take photographs of individuals as a necessary preliminary to the sale of said photographs and Goldtone Miniatures to such individuals and not for the purpose of obtaining photographs of present or potential news value for the press.

PAR. 6. Through the use of the said cards and oral statements of respondents' agents and representatives, respondents have represented, directly and by implication, that the persons who carry such said cards are accredited representatives of a recognized news photographic service or

agency to whom, in the course of their work, there are frequently accorded by police authorities opportunities to observe and take photographs of current events not accorded to others, and that respondents have offices or agencies or representatives in London, England; Paris, France and Berlin, Germany.

PAR. 7. The aforesaid representations were deceptive and untrue. In truth and in fact respondent has not, and never had, offices or agencies or representatives in London, England or Paris, France, or Berlin, Germany. Respondents' representatives and salesmen were not accredited representatives of a recognized news photographic service or agency, and the said cards were supplied to them solely for the purpose of inducing those asked to pose for photographs to believe that their pictures were being sought because of their present or potential news value.

PAR. 8. Respondents' representatives and salesmen also orally represented, directly and by implication, to prospective subjects that their photographs were desired in order that prints would be available in the event that they were desired for publication by the press and that many newspapers obtained such desired photographs from respondents.

PAR. 9. The aforesaid representations were deceptive and untrue. In truth and in fact respondents desired to take photographs in order that they might receive orders therefore and for Goldtone Miniatures made therefrom, from the subjects thereof, and not in order that they might be available for publication in the press. Respondents were not, except in very rare instances, a source of supply for photographs to newspapers.

PAR. 10. Respondents also represented that they were "official photographers" for, or were connected with, particular newspapers and were obtaining photographs for such newspapers. Such representations were made orally by respondents' representatives and salesmen and the display of letters on the letterheads of such newspapers containing such statements.

PAR. 11. The said representations were deceptive and untrue. In truth and in fact respondents did not have connections with said newspapers and were not obtaining photographs for them, except that respondents did supply to each such newspaper one print of each photograph taken in the community in which such newspaper was located as consideration for the giving by said newspaper of the letter referred to above.

PAR. 12. After taking photographs of those who consented thereto, respondents submitted proofs thereof to such persons and endeavored to sell them prints and later endeavored to sell to such persons "Goldtone Miniatures" made from said photographs. In the course and conduct of their business and for the purpose of inducing the purchase of said miniatures, respondents have made and caused to be made, directly and by implication, by means of letters sent to prospective purchasers of said miniatures many false and deceptive representations with respect thereto. Among and typical of such representations are the following.

... our photographer made several very fine portrait studies of you, one of which we have found admirably adaptable for reproduction as a Goldtone Miniature.

Recently we held an exhibition of Goldtone Miniatures and we are disposing of those which remain at the especially reduced price of \$12.50. Our regular price is \$75. We offer you the opportunity of acquiring one of these yourself at the special price of \$12.50.

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Recently we made a Goldtone Miniature from one of your negatives for display at an exhibition of miniatures. . . . The exhibition has been concluded and we are . . . offering you the opportunity of acquiring for yourself this fine reproduction at the greatly reduced price of \$12.50. Our regular price is \$75.

We would appreciate hearing from you before dismantling the miniature.

. . . a very fine miniature of yours which we have on hand from our recent exhibition of miniatures. . . . Inasmuch as we have no further exhibitions planned at this time we believe that the miniature would be of far greater value to you than to us. . . . those few miniatures which remain will shortly be sent out to our salesmen as additional samples of our workmanship.

As your negatives were very suitable for miniature work, we recently finished a Goldtone Miniature from one of these negatives for an exhibit. Inasmuch as this exhibit is over, we can now offer this excellent piece of workmanship to you at a price of \$12.50. The regular price for this work is \$75.00.

PAR. 13. Through the use of the representations in said letters hereinabove set forth, and others similar thereto not specifically set out herein respondents have represented, directly and by implication, to the individuals to whom said letters were sent, that respondents had on hand completed Goldtone Miniatures of such persons; that such miniatures had been made for purposes of display at an exhibition as especially fine examples of respondents' art and workmanship; that said exhibition had been concluded and many of the miniatures there displayed by respondents had been purchased by the persons whom they portrayed; that unless the said individuals purchased the said miniatures they would be dismantled or used by respondents & salesmen as examples of respondents' workmanship, and that although the regular or usual price at which such miniatures were sold by respondents was \$75.00, that said individuals might purchase them at a special or reduced price of \$12.50.

PAR. 14. The said representations were deceptive and untrue. In truth and in fact respondents never displayed any miniatures at any "exhibition" in any accepted sense of the word but merely from time to time hung some few such miniatures on the walls of their place of business. Only in rare instances did they even have miniatures of the individuals to whom such letters were sent, since usually such miniatures were made only after they had been ordered. Respondents' regular and customary price for such miniatures was not \$75.00 and the price of \$12.50 quoted by respondents was not a special or reduced price but that at which they were regularly and usually sold by respondents.

PAR. 15. The use by respondents of the foregoing false and deceptive representations with respect to their photographs and miniatures has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were true and into the purchase of substantial numbers thereof because of said erroneous and mistaken belief.

PAR. 16. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on December 31, 1942, issued and subsequently served its complaint in this proceeding upon respondents, David Jacobs, and Allied News-Photo Service Corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer, the Commission, by order entered herein, granted respondents' motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, David Jacobs, is an individual, with his office and principal place of business at 439 Madison Avenue, New York, N. Y. Respondent, Allied News-Photo Service Corporation, is a corporation, organized under the laws of the State of New York, with its office and principal place of business at 439 Madison Avenue, New York, N.Y. Respondent, Jacobs, holds all the offices in said corporation and is now, and at all times mentioned herein has been, in control of the management, policies, and operation thereof, particularly in respect to the acts and practices herein found. Said respondents trade under the names Allied News Photographic Service, Shelburne Studios, Shelburne Company, Miniature Gallery of New York, and Globe Press-Photo Service.

PAR. 2. Respondents are now, and have been for more than two years last past, engaged in the business of making photographs of persons and selling and distributing said photographs and "Goldtone Miniatures" made therefrom. Respondents cause said photographs and miniatures, when sold, to be transported from their place of business in the State of New York to purchasers thereof in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said photographs and miniatures 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 securing permission to take said photographs as a necessary preliminary to inducing the purchase thereof, respondents have made, and caused to be made, false and misleading statements and representations to prospective subjects for and purchasers of said photographs and miniatures concerning the identity, nature, and character of their business.

PAR. 4. Through the use of the names "Allied News-Photo Service Corporation," "Globe Press-Photo Service," and "Allied News Photographic

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Service," respondents have represented, directly and by implication, to prospective subjects for photographs that they are in the business of obtaining photographs of persons whose photographs are, or may be, of interest to the public for the press, i.e., for newspapers, magazines, and other periodicals published throughout the United States; that such photographs are desired by respondents because of their present or prospective news value; that respondents are connected with newspapers in such a fashion that in the event that such papers desire photographs of such prospective subjects, they would obtain them from respondents; and that the said respondents are news or press photographers or photographic agencies as distinguished from portrait photographers. The said names are brought to the attention of subjects and prospective subjects orally by respondents' salesmen, by the use of mailing envelopes sent to prospective purchasers of photographs, and by the display of cards with which respondents supply their salesmen and representatives. Said cards are in substantially the following form:

.....
 To Police Department:
 Please extend every reasonable courtesy
 essential to the bearer

Issued to
 Signature of Bearer

Authorized as Staff Photographer.....

Allied News
 Photographic Service
 439 Madison Avenue B. Gordon
 New York City
 General Manager
 London Paris Berlin

PRESS CARD

CONDITIONS

The holder hereof in accepting this card, assumes all risk of injury or accident and damage to person or property incident to the use thereof.

The bearer agrees to abide by any reasonable direction of a Police officer or a member of the Fire Dept.

.....
 Weight Eyes Hair Height Age

NOT TRANSFERABLE

PAR. 5. The aforesaid representations are deceptive and untrue. In truth and in fact, respondents do not conduct a news or press photographic agency but are engaged in the business of making portrait photographs and "Goldtone Miniatures" and selling them to individual private customers. Respondents have no regular connection with any newspaper or news-gathering or news-disseminating agency, nor do they, except in rare instances, furnish photographs to newspapers or to such agencies. Respondents seek permission to take photographs of individuals as a necessary preliminary to the sale of said photographs and "Goldtone Miniatures" to such individuals and not for the purpose of obtaining photographs of present or potential news value for the press.

PAR. 6. Through the use of the said cards and oral statements of respondents' agents and representatives, respondents have represented, directly and by implication, that the persons who carry such said cards are accredited representatives of a recognized news photographic service or agency to whom, in the course of their work, there are frequently accorded by police authorities opportunities to observe and take photographs of current events not accorded to others, and that respondents have offices or agencies or representatives in London, England; Paris, France; and Berlin, Germany. These representations are deceptive and untrue. In truth and in fact, respondents have not, and never had, offices or agencies or representatives in London, England; or Paris, France; or Berlin, Germany. Respondents' representatives and salesmen are not accredited representatives of a recognized news photographic service or agency, and the said cards were supplied to them solely for the purpose of inducing those asked to pose for photographs to believe that their pictures were being sought because of their present or potential news value.

PAR. 7. Respondents' representatives and salesmen also orally represented, directly and by implication, to prospective subjects that their photographs were desired in order that prints would be available in the event that they were desired for publication by the press and that many newspapers obtained such desired photographs from respondents. These representations were deceptive and untrue. In truth and in fact, respondents desired to take photographs in order that they might receive orders therefor and for "Goldtone Miniatures" made therefrom, from the subjects thereof, and not in order that they might be available for publication in the press. Respondents were not, except in very rare instances, a source of supply for photographs to newspapers.

PAR. 8. Respondents also represented that they were "official photographers" for, or were connected with, particular newspapers and were obtaining photographs for such newspapers. Such representations were made orally by respondents' representatives and salesmen and the display of letters on the letterheads of such newspapers containing such statements. These representations were deceptive and untrue. In truth and in fact, respondents did not have connections with said newspapers and were not obtaining photographs for them, except that respondents did supply to each such newspaper one print of each photograph taken in the community in which such newspaper was located as consideration for the giving by said newspaper of the letter referred to above.

PAR. 9. After taking photographs of those who consented thereto, respondents submitted proofs thereof to such persons and endeavored to sell

them prints and later endeavored to sell to such persons "Goldtone Miniatures" made from said photographs. In the course and conduct of their business and for the purpose of inducing the purchase of said miniatures, respondents have made and caused to be made, directly and by implication, by means of letters sent to prospective purchasers of said miniatures, many false and deceptive representations with respect thereto. Among and typical of such representations are the following:

* * * our photographer made several very fine portrait studies of you, one of which we have found admirably adaptable for reproduction as a Goldtone Miniature.

* * * * *

Recently we held an exhibition of Goldtone Miniatures and we are disposing of those which remain at the especially reduced price of \$12.50. Our regular price is \$75. We offer you the opportunity of acquiring one of these yourself at the special price of \$12.50.

* * * * *

Recently we made a Goldtone Miniature from one of your negatives for display at an exhibition of miniatures * * *. The exhibition has been concluded and we are * * * offering you the opportunity of acquiring for yourself this fine reproduction at the greatly reduced price of \$12.50. Our regular price is \$75.

* * * * *

We would appreciate hearing from you before dismantling the miniature.

* * * * *

* * * a very fine miniature of yours which we have on hand from our recent exhibition of miniatures. * * * Inasmuch as we have no further exhibitions planned at this time we believe that the miniature would be of far greater value to you than to us. * * * those few miniatures which remain will shortly be sent out to our salesmen as additional samples of our workmanship.

* * * * *

As your negatives were very suitable for miniature work, we recently finished a Goldtone Miniature from one of these negatives for an exhibit. Inasmuch as this exhibit is over, we can now offer this excellent piece of workmanship to you at a price of \$12.50. The regular price for this work is \$75.00.

PAR. 10. Through the use of the representations in said letters, hereinabove set forth, and others similar thereto not specifically set out herein, respondents have represented, directly and by implication, to the individuals to whom said letters were sent, that respondents had on hand completed "Goldtone Miniatures" of such persons; that such miniatures had been made for purposes of display at an exhibition as especially fine examples of respondents' art and workmanship; that said exhibition had been concluded by many of the miniatures there displayed by respondents had been purchased by the persons whom they portrayed; that unless the said individuals purchased the said miniatures they would be dismantled and used by respondents' salesmen as examples of respondents' workmanship; and that although the regular or usual price at which such miniatures were sold by respondents was \$75.00, that said individuals might purchase them at a special or reduced price of \$12.50. These representations are decep-

tive and untrue. In truth and in fact, respondents never displayed any miniatures at any "exhibition" in any accepted sense of the word but merely from time to time hung some few such miniatures on the walls of their place of business. Only in rare instances did they even have miniatures of the individuals to whom such letters were sent, since usually such miniatures were made only after they had been ordered. Respondents' regular and customary price for such miniatures was not \$75.00 and the price of \$12.50 quoted by respondents was not a special or reduced price but that at which they were regularly and usually sold by respondents.

PAR. 11. The use by respondents of the foregoing false and deceptive representations with respect to their photographs and miniatures has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and into the purchase of substantial numbers thereof because of said erroneous and mistaken belief.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondents, in which answer respondents admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts, 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 respondent, David Jacobs, an individual, his representatives, agents, and employees, and respondent, Allied News-Photo Service Corporation, its officers, representatives, agents, and employees, jointly or severally, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of photographs and miniatures made therefrom in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "News" or "Press," or any other word or words of similar import or meaning, in or as a part of any corporate or trade name for the business of selling to persons photographed prints of such photographs; or otherwise representing in any manner in connection with such business that respondents are news or press photographers.

2. Representing, directly or by implication, in the course of their usual business as commercial portrait photographers that they desire to take photographs of individuals because of the present or potential news value of such photographs, or for any reason other than their desire to sell to such individuals prints of such photographs.

3. Representing, directly or by implication, that they have any regular connection with any newspaper or news-gathering or news-disseminating agency.

4. Representing, directly or by implication, that they maintain any place of business or any agent or employee in any location where in fact no place of business or agent or employee is maintained.

5. Representing, directly or by implication, as the regular or usual prices of their products, any amounts other than those at which such products are regularly and customarily sold by them; or representing as special or reduced prices the amounts at which such products are regularly and customarily sold by them.

6. Representing, directly or by implication, that they have prepared or placed on exhibition any photograph or miniature of any purchaser or prospective purchaser thereof unless such photograph or miniature has in fact been produced or placed on exhibition.

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

Syllabus

IN THE MATTER OF
GENERAL FOODS CORPORATION; FROSTED FOODS SALES
CORPORATION; GENERAL SEAFOODS CORPORATION;
AND 40-FATHOM FISH, INC.

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

Docket 4627. Complaint, Nov. 7, 1941—Decision, Nov. 18, 1944

Where a corporation and its three wholly owned subsidiaries, with principal offices and places of business in New York City and in Boston, engaged in the interstate sale and distribution, among other things, of frozen rosefish fillets which they usually shipped in cartons of from 5 to 10 pounds to wholesalers and retailers in the inland regions of the United States, and principally in the Middle Western States centering around Chicago, in which area is also usually sold the fresh water yellow perch or "perch"—

Designated their said rosefish fillets as "Ocean Perch Fillets" and, when sold under trade name "Birds Eye Frosted Foods" by particular subsidiary concerned, as "Fillets of Red Perch," and prominently displayed said words on the cartons packaging said products, on the waxed paper in which they were wrapped, in advertisements in newspapers and periodicals, and in booklets, pamphlets and other advertising material and sold the same to dealers by whom they were displayed, usually with skin side down, so as to be indistinguishable by purchasers generally from yellow perch, and by whom they were in some instances designated as perch, or so sold;

The facts being the fish properly designated and commonly known to the consuming public generally, particularly in the Middle Western States, as "perch," the yellow perch, which is found exclusively in fresh water and chiefly in the Great Lakes region, is in large demand by the public, and particularly so in aforesaid States; and there is no scientific basis or common usage which would justify use of the word "perch" to thus designate said former throwaway fish, price of which was as low as 25¢ for 100 pounds prior to the time they began marketing the fillets thereof under the aforesaid names;

With the result that, through thus advertising and designating their rosefish fillets as "ocean perch" and "red perch," they placed in the hands of retailers and resellers of said products a means and instrumentality wherewith to mislead and deceive members of the consuming public, and many customers of aforesaid dealers purchased as and for yellow perch such rosefish fillets; and with tendency and capacity to mislead and deceive members of the buying and consuming public in the aforesaid respect, and with effect of inducing purchase of substantial quantities of said fillets of rosefish by members of the consuming public by reason 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. Arthur F. Thomas* and *Mr. Andrew B. Duwall*, trial examiners.

Mr. Merle P. Lyon and *Mr. Clark Nichols* for the Commission.

Mr. Lester E. Waterbury, of New York City, for respondents.