

IN THE MATTER OF
WOELFEL STUDIO, 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 4649. Complaint, Mar. 10, 1942¹—Decision, Feb. 7, 1945

Where a number of individuals engaged as "operators" in the competitive interstate sale and distribution to members of the consuming public of colored enlargements or miniatures of photographs and snapshots, produced by one W. at his Chicago studio and purchased by them from him along with frames therefor; together with various other individuals, who as "crew managers," "road managers," "proof passers," "delivery men," "salesmen" and "sales agents," assisted them in selling and distributing said products to the public—

- (a) Employed trade names such as "United Art Company," "Atlas Portrait Company," "Modernistic Art Company," "Windsor Studio," "Superior Artists Association," "Royal Art Studios," "Real Art Portrait Company," "Windsor Portrait Service," "American Art Association," "Modern Art Company," "Central Art Company," and "National Art Association," and, with the consent and active assistance of said W., made use of the Chicago address of his studio as the address of the businesses conducted by them under such trade names, and used said names and address on their contract forms, order blanks, and credentials; and

Where said W., with authority so to do—

- (b) Received and opened mail addressed to the trade names used by such "operators," answered such of the complaints as he could handle, by writing letters on behalf of said operators on their trade-name stationery kept in his office and signing them with the trade name to which the complaint was addressed; and forwarded such as he could not handle, to the operator to whom it was addressed;

Notwithstanding the fact that none of said operators or their aforesaid employees owned or operated any art studio or place of business at said Chicago address or at any other place, or had in his employ any persons skilled in producing the products they sold; nor the fact that the business operations indicated were conducted solely by said W., who possessed the equipment and employed the personnel necessary for making the products sold by him to said operators and by them and their sales agents to the consuming public;

With the result that purchasers were led to believe that they were dealing with sales agents of an actual art studio, etc. and confused the character of the said operators' business with that of organizations of similar name which, like the studio in question, were actually conducting an art studio; and said operators, through the use of such trade names and business address, obtained prestige with purchasers and, along with said W., and his office manager, who conducted collections as below described, were enabled to evade liability to purchasers for their representations and sales methods; and

Where a collection agency under the designation "States Finance Co.," conducted by said office manager as part of the plan for selling and distributing said products with respect to which (1) the operators made it a practice to have purchasers execute notes for any balance due—usually upon printed forms bearing the trade name of the operator and the aforesaid Chicago address—which, through understanding

¹ Amended.

with said W., were assigned and delivered for collection to said company in Chicago which made a charge for each note whether or not collection was successfully made; (2) said company furnished to operators printed envelopes for the use of their customers in remitting installment payments to it; (3) operators with satisfactorily established credit maintained running accounts with W. which were credited with amounts collected by "States Finance Co." on notes and debited with charges for Studio products sold to them; (4) no separate books were kept by "State Finance Co." and any amounts due operators on account of the collection of notes or as a result of the aforesaid running accounts were paid by check of the Studio; and (5) said Finance Company actually operated from the office of the Studio while using the address of a side entrance on a different street—

- (c) Represented through statements in form letters addressed to debtors in instances where makers of the notes failed or refused to pay or unduly delayed payments, that it was an innocent holder for value of said notes for unpaid balances, that it had paid for the merchandise, that the entire obligation was now directly to it, and that it was looking to the addressee for entire settlement;

The facts being that it had not paid any sum or given anything of value for the notes on which it sought payment; said notes actually continued to be the property of the operator who secured them and, in the event of failure to collect the notes, he stood any loss involved; and the true function of said States Finance Co. was to assist in the business operations conducted by the aforesaid persons in the sale and distribution of the products of said Studio; and

Where said operators and their said sales agents—

- (d) Designated the pictures being offered as "paintings" or "portrait paintings," and so described them in contract forms for orders, and at times described them to prospective purchasers as such, or as "oil paintings" or "portrait paintings" or "paintings finished in oil by hand";

The facts being said colored photographs, enlargements or miniatures, made from the photograph furnished by the customer, through use of special photographic equipment, and colored with airbrush and hand brush, were not "paintings" as understood by artists, photographers and the general public;

- (e) Falsely represented to prospective customers that the finished picture would be equal in appearance to the samples exhibited, notwithstanding the fact that many photographs or snapshots accepted by said operators or their agents were photographically inferior and incapable of producing good enlargements or miniatures, and said W. was unable to produce therefrom a finished product equal in appearance to the sample which had been displayed to the purchaser;

- (f) Represented that said paintings, etc., were being sold or delivered at a "reduced price" or an "advertising price," as a "special introductory offer," or at the "cost of production," and made such representations in connection with the use of a "draw," in the operation of which the customer was induced to take a "chance" by drawing from a number of envelopes containing slips of paper; representing that the purchaser who drew the "lucky coupon" or "lucky certificate" was entitled to receive a \$25 or a \$30 hand-painted painting or hand-painted portrait for only \$6.25 or some comparable sum;

The facts being that the envelopes were so manipulated that an acceptable customer invariably drew a lucky coupon or certificate which, however, gave the holder no advantage in price over any other purchaser; and said pictures, sold either by use of the "draw" or otherwise, were not sold at any "reduced price" or "advertising price," at any "special introductory offer," or "at the cost of production," and did not have any \$25 or \$30 sales value, but on the contrary the prices at which sales were made were their regular and customary prices;

- (g) Concealed from, or failed to disclose to, customers at the time pictures were or-

dered, that the finished picture would be hexagonal in shape, with a convex surface, so that it could be used only in a specially designed, odd-style frame that would be difficult or impossible to obtain from any source other than themselves; and in some cases in which customers, approached in due course by a second sales agent or "delivery man" with the finished picture mounted in an expensive type of frame, objected or refused to purchase the same notwithstanding agent's representations that his company made the only frame which would fit the picture and that it would not hold its color or be of any value unless framed, refused to deliver the completed picture regardless of whether or not it had been paid for in full, and on occasion refused to return the original photograph loaned by the customer until the frame was ordered, notwithstanding that purchasers had been advised that photographs submitted by them would be returned at the time the finished picture was submitted; and thereby placed in the hands of operators and their sales agents a means to effectuate their purpose of selling a frame in addition to the picture already sold to the customers;

With the result of misleading and deceiving a substantial number of the purchasing public into an erroneous belief that such representations were true, and into the purchase of said products, whereby trade was diverted unfairly to them from their competitors:

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

Mr. Marshall Morgan for the Commission.

Nash & Donnelly, of Washington, D. C., for Frank F. Woelfel, Fred E. Willis, R. D. Minyard, Ray Pietz, O. D. Redd, Clayton G. Brown, F. H. Munger and George Westphal.

Mr. William D. Sabiston, Jr., of Carthage, N. C., for C. W. Short, E. B. Cook, S. B. Hunsucker, Jewel Long, Kathryn Maciborski, J. L. McLean, Paul F. Nelson, Mrs. C. W. Short, H. B. Short, Mrs. E. B. Cook, E. W. Hunsucker, J. E. Liles, Bertie Mae Long, W. B. Lovings, J. L. Maciborski, R. E. Murphey (M. E. Slusser), Gladys E. Powell, Leslie E. Powell, Al C. Sachs, Belle Short and E. D. Short.

AMENDED 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 parties named in the caption hereof and more particularly hereinafter designated and referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Frank F. Woelfel, is an individual, trading as Woelfel Studio, having his principal offices and place of business at 806 West Washington Boulevard in the city of Chicago, State of Illinois, and he directs and controls the business policies and activities of said Woelfel Studio in carrying out the acts and practices hereinafter alleged.

Respondents, Frank F. Woelfel and Fred E. Willis, are individuals, trading as States Finance Company, with their offices and principal place of business at 104 North Halstead Street, Chicago, Ill. Respondent, Woelfel owns, dominates and controls said States Finance Company,

which is operated for the account of Woelfel Studio by respondent, Willis. States Finance Company serves as a collection agency and medium for Woelfel Studio in collecting various balances due from purchasers of pictures and frames therefor sold by Woelfel Studio as will be more fully hereinafter shown. The States Finance Company and Woelfel Studio are operated out of the same building in Chicago, Ill., but the address used for States Finance Company is 104 North Halstead Street, and the address used for Woelfel Studio is 806 West Washington Boulevard, Chicago, Ill.

Respondent, R. E. Hardy, is an individual, trading as Aetna Portrait Company, with his office and principal place of business at 806 West Washington Boulevard, Chicago, Ill., and as such is associated with and is a representative of respondent, Frank F. Woelfel, trading as Woelfel Studio.

Respondent, H. L. Fellers, is an individual, trading as United Art Company, with his office and principal place of business at 806 West Washington Boulevard, Chicago, Ill., and as such is associated with and is a representative of respondent, Frank F. Woelfel, trading as Woelfel Studio.

Respondent, F. E. Findlay, is an individual, trading as Royal Art Distributor, with his office and principal place of business at 806 West Washington Boulevard, Chicago, Ill., and who formerly traded as Royal Art Studios, 806 West Washington Boulevard, Chicago, Ill., and as such is associated with and is a representative of respondent, Frank F. Woelfel, trading as Woelfel Studio.

Respondents, L. R. Grim and C. W. Short, are individuals, trading as Modernistic Art Company with their offices and principal place of business at 806 West Washington Boulevard, Chicago, Ill., and as such are associated with and are representatives of respondent, Frank F. Woelfel, trading as Woelfel Studio.

Respondent, Orville A. Hime, is an individual, trading as Windsor Studio, with his office and principal place of business at 806 West Washington Boulevard, Chicago, Ill., and as such is associated with and is a representative of respondent, Frank F. Woelfel, trading as Woelfel Studio.

Respondent, William R. Klaus, is an individual, trading as Atlas Portrait Company, with his office and principal place of business at 806 West Washington Boulevard, Chicago, Ill., and as such is associated with and is a representative of respondent, Frank F. Woelfel, trading as Woelfel Studio. His home address is Asheville, N. C.

Respondent, Alfred F. McCants, is an individual, trading as Real Art Studio, with his office and principal place of business at 2233 West 109th Street, Chicago, Ill., and as such is associated with and is a representative of respondent, Frank F. Woelfel, trading as Woelfel Studio.

Respondent, R. D. Minyard, is an individual, trading as Central Art Company, with his office and principal place of business at 806 West Washington Boulevard, Chicago, Ill., and as such is associated with and is a representative of respondent, Frank F. Woelfel, trading as Woelfel Studio. Respondent, Minyard, also uses the following addresses: Mexico, Mo.; 448 South Washington Street, Danville, Ill.; and 829 Main Street, Danville, Ill.

Respondent, C. S. Orr, is an individual, trading as Windsor Studio, with his office and principal place of business at 806 West Washington Boulevard, Chicago, Ill., and formerly trading as Paris Portrait Company, with his office and principal place of business at 806 West Washington

Boulevard, Chicago, Ill., and as such is associated with and is a representative of respondent, Frank F. Woelfel, trading as Woelfel Studio.

Respondent, Ray Pietz, is an individual, trading as National Arts Association, with his principal place of business at 806 West Washington Boulevard, Chicago, Ill., and as such is associated with and is a representative of respondent, Frank F. Woelfel, trading as Woelfel Studio.

Respondent, O. D. Redd, is an individual, trading as Modern Art Company, and also trading as Central Art Company with his office and principal place of business at 806 West Washington Boulevard, Chicago, Ill., and as such is associated with and is a representative of respondent, Frank F. Woelfel, trading as Woelfel Studio.

Respondent, J. H. Robinson, is an individual, trading as American Art Association, and formerly trading as Buckeye Art Studio, whose office and principal place of business is 806 West Washington Boulevard, Chicago, Ill., and whose home address is 1433 Walnut Street, Cincinnati, Ohio, and as such is associated with and is a representative of respondent, Frank F. Woelfel, trading as Woelfel Studio.

Respondent, Arthur G. Russell, is an individual, trading as Continental Arts Association, with his office and principal place of business at 806 West Washington Boulevard, Chicago, Ill., and as such is associated with and is a representative of respondent, Frank F. Woelfel, trading as Woelfel Studio.

Respondent, Otto F. Schneider, is an individual, trading as Royal Art Studios, with his office and principal place of business at 806 West Washington Boulevard, Chicago, Ill., and as such is associated with and is a representative of respondent, Frank F. Woelfel, trading as Woelfel Studio.

Respondent, A. M. Thompson, is an individual, trading as Advance Portrait Company, whose office and principal place of business is 806 West Washington Boulevard, Chicago, Ill., and as such is associated with, and is a representative of respondent, Frank F. Woelfel, trading as Woelfel Studio.

Respondent, Hal Thompson, is an individual, trading as Continental Arts Association, with his office and principal place of business at 806 West Washington Boulevard, Chicago, Ill., and as such is associated with and is a representative of respondent, Frank F. Woelfel, trading as Woelfel Studio.

Respondent, R. Ware, is an individual, trading as Superior Art Association, and also trading as Standard Art Studio, with his office and principal place of business at 806 West Washington Boulevard, Chicago, Ill., and as such is associated with and is a representative of respondent, Frank F. Woelfel, trading as Woelfel Studio.

The above-named respondents, H. L. Fellers, F. E. Findlay, L. R. Grim, R. E. Hardy, Orville A. Hime, William R. Klaus, Alfred F. McCants, R. D. Minyard, C. S. Orr, Ray Pietz, O. D. Redd, J. H. Robinson, Arthur G. Russell, Otto F. Schneider, C. W. Short, A. M. Thompson, Hal Thompson and R. Ware, are hereinafter on occasion referred to as respondent representatives.

Respondents, C. Belgard, Bob Bergin, Clayton G. Brown, B. F. Cobb, 717 Parker Street, Jacksonville, Fla.; L. B. Cook, Box #367, Carthage, N. C.; % C. W. Short; Mrs. E. B. Cook, Peterstown, W. Va.; J. P. Conrad, 717 Parker Street, % B. F. Cobb, Jacksonville, Fla.; L. E. Cox, 112 N. Daniels Street, Springfield, Ill.; Leo Crowder, H. F. Dindinger, 432 Corona Street, Denver, Colo.; C. G. Frye, J. Alene Frye, James F. Cautney,

% O. D. Redd, 806 West Washington Boulevard, Chicago, Ill.; J. L. Gilmore, Box #367, Carthage, N. C., % C. W. Short; George E. Grabow, Mary Granata, Troy Gravette, H. Guteman, G. B. Harshbarger, 123 Dodge Street, Palatka, Fla.; C. E. Heard, F. H. Herd, M. Hollingsworth, Rufus Hudson, E. W. Hunsucker, Box #367, Carthage, N. C., % C. W. Short; S. B. Hunsucker, Ellen Lanning, Morris A. Lee, J. E. Liles, 1706 Pendleton Street, Columbia, S. C.; Bertie Mae Long, Box #367, Carthage, N. C., % C. W. Short; Jennell Long, Jewel Long, W. B. Lorkup, W. B. Lovings, Box # 367, Carthage, N. C., % C. W. Short; J. L. Maciborski, Box #367, Carthage, N. C., % C. W. Short; Kathryn Maciborski, Box #367, Carthage, N. C., % C. W. Short; George McCullough, Delmer McLaughlin, Mrs. Delmer McLaughlin, J. L. McLean, F. H. Munger, R. E. Murphey, General Delivery, Greensboro, N. C.; Paul F. Nelson, Dorothy Notzen, Frank Parker, Gladys E. Powell, Box #367, Carthage, N. C., % C. W. Short; Leslie E. Powell, Box #367, Carthage, N. C., % C. W. Short; Bill Reed, F. Y. Robinson, Mrs. J. H. Robinson, Al C. Sachs, 1435 W. Lynwood Avenue, San Antonio, Tex.; J. C. Rosser, Route #3, Carthage, N. C.; R. T. Sherrod, 717 Parker Street, Jacksonville, Fla., % B. F. Cobb; Belle Short, Box #367, Carthage, N. C., % C. W. Short; Mrs. C. W. Short, Box #367, Carthage, N. C., % C. W. Short; E. D. Short, Box #367, Carthage, N. C., % C. W. Short; H. B. Short, Box #367, Carthage, N. C., % C. W. Short; Reba Stone, W. G. Wagner, George Westphal, Harold Wolcott, Alonzo Williams, 123 Dodge Street, Palatka, Fla., % G. B. Harshbarger; and R. M. Ziebell, are individuals, and are sales agents and employees of one or more of the respondents, and herein-after on occasion are referred to as respondent sales agents.

All of said individual respondent sales agents maintain their principal office and place of business at 806 West Washington Boulevard, Chicago, Ill.

All of the respondents are now, and have been for more than three years last past, engaged in the sale and distribution of tinted or colored enlargements or tinted or colored miniatures of photographs or snapshots, and frames therefor. Respondents cause, and at all times mentioned herein have caused, said products, when sold, to be transported from the State of Illinois to the purchasers thereof located in various other States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of said business respondents have and are now engaged in direct and substantial competition with various corporations, partnerships and individuals likewise engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia, of tinted or colored enlargements and tinted or colored miniatures of photographs or snapshots and frames therefor, with corporations, partnerships and individuals engaged in the sale and distribution of genuine original oil paintings, miniatures and water-color paintings in commerce between and among various States of the United States and in the District of Columbia.

PAR. 3. Respondents, during the three years or more last past, 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 tinted or colored enlargements and tinted or colored miniatures of photographs or snapshots, and frames therefor, to the purchasing public through the use of false, misleading and deceptive acts, methods and practices.

PAR. 4. In the course and conduct of said enterprise, said respondent, Frank F. Woelfel, an individual, trading as Woelfel Studio, is engaged in the business of producing and distributing colored or tinted enlargements and miniatures of photographs and snapshots, and the sale of frames therefor, and in the sale and distribution thereof he directs and controls the policies, affairs and activities of the Woelfel Studio 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 unfair and deceptive acts and practices herein alleged.

Associated with said respondent, Woelfel, are various operators, associates or representatives who, through the medium of various and sundry trade names, offer for sale, sell and distribute said respondent's products to the consuming public. Respondent representatives and respondent sales agents are such operators, associates or representatives of said respondent. The respondent representatives employ numerous persons in various capacities, such as "crew managers," "road managers," "proof-passers," "delivery men" and salesmen or sales agents, who contact the purchasing public in the sale, distribution and delivery of the products produced by the respondent, Woelfel, and sold and distributed by the respondent, Woelfel, and the respondent representatives. Respondent sales agents are connected with respondent, Woelfel, and the respondent representatives in selling and delivering capacity in connection with the sale and distribution of said respondent, Woelfel's products.

PAR. 5. Pursuant to said understandings, agreements, combinations and conspiracies and in furtherance thereof, each and every one of said respondents, acting in concert and cooperation with each other and with divers other persons whose names are to the Commission unknown, have engaged in various unfair and deceptive acts and practices in commerce and various unfair methods of competition in commerce, of which the following are typical:

1. In buying respondents' products, purchasers and prospective purchasers believe that they are contracting or dealing with duly constituted representatives or sales agents of existing studios or art companies whose names appear on the various contract forms, order blanks, or identification certificates produced by said representatives or sales agents.

In truth and in fact, the names of such studios or art companies are wholly fictitious in that there are no such studios or art companies in existence, but to the contrary these are merely trade names used by the various respondent representatives engaged in the sale of products produced and distributed by Woelfel Studio. These various contract forms, order blanks and identification certificates give the telephone number, street and cable address of Woelfel Studio as their own. Respondent representatives and respondent sales agents do not in any way operate art companies, art associations or studios, nor do they in any manner engage in the business of making, enlarging or the tinting of photographs. The Woelfel Studio's products are sold by such agents, representatives and canvassers operating under various fictitious names, thereby misleading the public as to the real name of the manufacturer of the product. Respondent representatives and respondent's sales agents are furnished with identification certificates and credentials which are signed by one of the fictitious studios or art companies. These are exhibited by respondent representatives and respondent sales agents when interviewing various prospective purchasers.

Complaint

Equipment, including catalogs, order blanks, daily report forms, receipts, and, in many instances, sample cases enclosing samples of respondent's products, is furnished by respondent, Woelfel, to said respondent representatives and respondent sales agents. Respondent, Woelfel, in many instances, causes orders or contracts for his products, to be entered on printed forms provided by him for that purpose. These order blanks are contracts containing respondent, Woelfel's address and a fictitious name or trade name of the respondent representative through whom the order is secured. Occasionally said contracts and forms are printed with a blank left in which to insert such fictitious trade names. When an order is secured, said order blanks or contracts are signed by the respondent representative or respondent sales agent securing the order as "representative," "advertising representative," "agent," or some similar capacity on a line provided therefor.

Among and typical of the form or order blank or contract and the form of certificate used by the respondents under the trade names mentioned herein, and under various other trade names to the Commission unknown, are the following:

(Form of order blank or contract)

MODERNISTIC

Art Co.

No. 12850
806 W. Washington Blvd.
Chicago, Ill., U.S.A.

Cable Address
"WOLSTU"

..... &, 193
Post Office State Date

You will please make for the undersigned, from the Photograph delivered to your representative this day,, finely finished Painting and deliver the same to me on or about the day of, 19.., the painting to cost me \$. Amount paid your representative \$., leaving a balance of \$., which I agree to pay at the time of delivery. THE ABOVE PRICE DOES NOT INCLUDE FRAMES OR GLASS COUNTER-MANDS NOT ACCEPTED.

This order is given you upon the further consideration that your company will deliver the paintings so ordered in suitable frames, which the undersigned is entitled to accept upon payment of a reasonable price, if the frames are satisfactory. In the event the undersigned does not accept the frames and pay for same, they are to be delivered forthwith to your company's deliveryman.

Received by
Representative Customer

Form A.

A PHOTOGRAPH IS A TREASURE DEAR—HAVE "YOURS" TAKEN ONCE A YEAR.

Complaint

40 F. T. C.

(Form of Certificate)

CONTINENTAL ARTS ASSOCIATION
806 W. WASHINGTON BLVD.

CHICAGO, ILLINOIS.

EXQUISITONE PORTRAITURE

This Certificate

entitled M. to one of our
Hand Finished Exquisitone Portraits in Water Colors 10 X 15 inches in size as a conditional combination offer for the purpose of extending our business.

The only requirement is that you purchase the frame for this portrait from us.

Basic outlines or the foundation of this portrait will be shown by our representative shortly. He will have with him a finished Exquisitone Portrait and catalogue of appropriate frames. At the time of your selection about one-half of the amount will be required as deposit, enabling you to pay the balance on delivery of the frame and portrait.

CONTINENTAL ARTS ASSOCIATION

By.....

Character Portraiture of Personal Distinction

The foregoing business arrangement is used by the respondents for the purpose of evading liability to purchasers for various false and misleading statements and representations which are made in the sale of respondent, Woelfel's products, and to give prestige to the various trade names used by respondent representatives and respondent sales agents. The so-called "Oil paintings," "hand painted portraits," "Exquisitone portraitures," "oil paintings on silk," "enlarged colored photographs," or "miniatures" produced, sold and distributed by respondents are not portraits, miniatures or paintings finished or produced by hand in oil colors in any sense of the word, but, to the contrary, are merely cheap, quickly made, enlarged photographic reproductions costing in the neighborhood of \$1.25 each, which are tinted, or colored, by the use of pastel or crayon, water color or other powdered pigments soluble in water, sprayed upon the enlarged photographic reproduction in solution largely through the use of a mechanical air brush and compressed air.

2. Respondents exhibit to purchasers and prospective purchasers samples of attractive colored and finished specimens of the purported type of work to be done. Prospective purchasers are told that they may obtain similar "paintings," "oil paintings," "miniatures," or "portraits" from respondents at a "reduced price," "advertising price," "special introductory price," for the "cost of production," or in some cases, "absolutely free."

In truth and in fact, the so-called portraits or tinted photographic reproductions produced, sold and distributed by respondents are different from and greatly inferior in quality, workmanship and appearance to the samples exhibited by respondents when obtaining orders for such products. In truth and in fact, such products are not sold or delivered at "reduced price," "advertising price," "special introductory price," for the "cost of production" or "absolutely free" but, to the contrary, the price at which respondents offer and sell unframed tinted photographic reproductions is

in excess of and above the regular and customary price for which said products usually and customarily sell in the ordinary course of business.

3. Said respondents, in some instances, induce the customer to lend them a photograph or kodak snapshot of the party or parties whose portrait is to be "hand painted" and represent that such photograph is to be used as a model or guide by the artist who is to "paint" the "portrait" or that an artist will make a "sketch" therefrom and that said photograph or kodak snapshot will be returned to the purchaser with the completed work. In other instances, respondents represent that they maintain an "art association," "art studio" or similar institution, in which highly skilled artists copy the photographs or snapshots by hand in oil colors so as to furnish the customer with a hand painted portrait or hand painted miniature in oil paints, whichever is desired. Respondents further represent to the prospective purchaser that the so-called "portrait" or "oil painting" will be finished in oil paints by hand on a durable background, such as linen or silk.

In truth and in fact, respondents are not now conducting, and never have conducted, an art association, an art studio or similar institution, and such institutions are not now, and have not been during the times mentioned herein, owned or operated by the respondents herein. On the contrary, the business conducted by the respondents in the production, distribution and sale of said portraits and frames is and has been nothing more, in fact, than a commercial business enterprise, selling to the purchasing public for profit cheap colored or tinted photographic enlargements or miniatures, and frames therefor. The use by respondents of the terms "art association," "art studio" and other terms of similar import and meaning misleads and deceives the purchasing public as to the character of the business actually conducted by the respondents, and has caused the purchasing public to confuse respondents' business with various organizations of similar name or designation which conduct an "art association," "art studio" or "art company," and which are properly designated as such.

In truth and in fact, the products produced by respondents are not portraits or oil paintings as such terms are understood, finished in oil by hand on linen, silk, or other similar fabric, but, to the contrary, are made with water colors, as hereinabove described, on a type of photographic print paper containing no linen or silk materials but so finished that the surface has the appearance of cloth.

4. Respondents represent to purchasers that certain frames offered for sale are gold-plated and that said frames contain very high quality, unbreakable imported glass fronts.

In truth and in fact, said frames are not gold plates but are made of wood colored with a yellow-like substance having the appearance of gold, and the glass fronts used in said frames are of domestic origin.

5. When an order is secured, the delivery of the finished product is made at a subsequent date by a respondent representative or a respondent sales agent, generally known to the trade as a "follow-up" or "delivery man," or some individual associated with respondents other than the respondent or associate who secured the original order. The person making the delivery is represented by the respondents to be a "field artist" or "instructing artist." The picture is presented to the purchaser in a frame of unusual type of octagonal, convex shape, regardless of whether or not a frame has been previously ordered. Such frame and picture are of a type and shape

that if purchaser does not buy a frame from respondents he will find great difficulty in obtaining a frame to fit the picture from any other source. In the event the purchaser objects to the quality, design or high price of the frame or does not desire to purchase the frame, although in most instances, he has been previously advised that there is no obligation to buy a frame, he is for the first time informed that a frame for the product may not be purchased from any source other than through the respondents; that the portrait will not hold its colors or be of any value unless it is framed; and that the customer has agreed to "protect" and "exhibit" the portrait and consequently under such agreement is obligated to buy a frame. The respondents, in many instances, refuse to deliver the completed picture, regardless of whether or not it has been paid for in full, or even to return the original photograph loaned by the customer until a frame is ordered or a claimed balance due is paid in full.

In truth and in fact, the sales agent represented by respondents to be a "field artist" or "instructing artist" is not an artist in the sense that such term is ordinarily understood by the consuming public. On the contrary, said so-called "artist" is nothing more than a delivery man or frame salesman or follow-up man operating for and on behalf of respondents. Purchasers are not advised, and there is no such understanding or agreement in connection with said contracts, that photographs or snapshots loaned or submitted by purchasers are to be retained by respondents until payment of any sum alleged by respondents to be due them. On the contrary, purchasers are advised by respondents that photographs lent to respondents will be returned by respondents at the time the finished product is submitted, regardless of whether or not such product or a frame therefor, is purchased. Respondents conceal and have concealed from the purchasers at the time the so-called "portrait" is ordered the fact that the finished product will be cut in an unusual octagonal shape, and will be delivered in a frame of unusual octagonal, convex form and shape; and that it will be impossible for the purchasers thereafter to obtain a frame to fit said portrait from any source except from or through respondents at prices fixed by respondents.

6. The said respondents in other instances further represent to prospective customers that their "company" is putting on an advertising campaign to get it established in the customer's community; respondents' method of advertising is to induce the customers' to "take a chance" by drawing from a number of envelopes containing slips of paper, one of which is a so-called "lucky coupon" or "lucky certificate." Respondents further represent that the customer who draws the so-called "lucky coupon" or "lucky certificate" is to receive a \$25.00 hand painted oil portrait for only \$6.95. (At various times similar offers are made at different prices.) The said envelopes containing said slips are so manipulated by respondents that each prospective customer invariably draws a "lucky coupon" or "certificate," of which the following is typical:

ROYAL ART STUDIOS

No. 1568

For the purpose of advertising and extending our business the original holder of this

RED SEAL CERTIFICATE

(S E A L)

Is entitled to

receive our new opalescent painting under the special privileges outlined by our representative.

Issued to

Royal Art Studios.

Various other types of certificates not specifically set out herein are used by respondent representatives and respondent sales agents in carrying out the said so-called drawing contest scheme, and the representations and sales methods used in furthering the scheme sometimes vary with different sales.

The holders of said "Red Seal Certificates" or other so-called "lucky coupons" are led by the false statements and representations of respondents, and by the "fake" drawings in which the holders were "lucky," to believe that said coupon or certificate places the holder at a distinct advantage in purchasing a painting or portrait, and such holders are thereby induced to enter into contracts for the purchase of a so-called "painting" or "portrait." In truth and in fact, said coupon or certificate gives the holder thereof no advantage in price whatsoever, for practically all purchasers are permitted to secure a "lucky coupon" or "certificate," and all purchasers may purchase said "paintings" or "portraits" at the price used by respondents in making a so-called "special introductory offer." In truth and in fact, this procedure which is known to the trade as the "draw" is merely a sales scheme used to gain entry into prospective customers' homes and to secure from them a photograph or snapshot, and thus more easily facilitate the sale of a picture and frame.

7. At a later date, when the "follow-up" man or frame salesman appears with the finished picture framed as aforesaid, various representations are used to induce the customer to execute a promissory note for the balance due made payable to the fictitious trade name under which the particular respondent operates. Said note is "transferred" by respondent representative or sales agent to Woelfel Studio, which organization credits the amount of the sale to the account of the respondent under whose trade name or organization the sale is made. Respondent, Woelfel, then "transfers" the note to States Finance Company with the statement, "endorsed without recourse" appearing thereon. In case of controversy with the purchaser of any picture or frame, where such purchaser has given a note for the unpaid balance due on such picture or frame, the respondent to whom such note was given makes it a practice of avoiding any further responsibility in connection with the contract by referring the purchaser to States Finance Company and thus creating the impression in the mind of the purchaser that by reason of the fact that the purchaser has given a note now owned by States Finance Company, the respondent has been removed from the situation and is no longer involved in any contractual relationship with the purchaser. In this connection, the following and

other statements of similar import are used by States Finance Company in connection with such transactions:

We explained in a previous letter * * * that we are strictly a finance company and have nothing whatever to do with the transactions of any other organization. When you signed a note in the amount of \$. . . . you received certain merchandise and on the strength of your signature we paid for that merchandise at the time we procured the note. The entire obligation is now directly to us and we must look to you for entire settlement.

The above obligation has been turned over to us by (here is used trade name of respondent representative making sale). All payments must be made to States Finance Company.

In connection with these and similar representations respondent, Woelfel, trading as States Finance Company, advises the purchaser that the "company" has bought the note of the purchaser or customer, has paid a consideration therefor, is an innocent purchaser thereof and looks to the customer for the payment of the note.

In truth and in fact, States Finance Company and Woelfel Studio, while represented to be different business entities, are and have been one and the same, each being owned, managed, operated and controlled out of the same building in Chicago, by respondent, Woelfel. Respondent, Woelfel, trading as States Finance Company does not buy the notes in question by discount or otherwise and has not paid Woelfel Studio any consideration therefor since the respondent, Woelfel, is one and the same person, trading under both trade names Woelfel Studio and States Finance Company. The purchaser of a picture or frame who gives a note for an unpaid balance upon discovery of the inferior quality of the "painting" and the frame thus is led to believe that he is unable to deal with the respondent with whom he contracted, but must deal with an innocent purchaser for value who is in no wise responsible for the representations made, or a breach of the original contract. Accordingly, purchasers have no opportunity of objecting to the quality of the merchandise delivered and are subjected to harassment and pressure through threats of various kinds.

In further connection with the operation of his business plan as the same relates to the collection of money alleged to be due for pictures and frames, respondent, Woelfel, through his collection agency, States Finance Company, resorts to various methods of frightening, intimidating and harassing purchasers in the further payment of money alleged to be due for pictures and frames. In this connection respondent, Woelfel, trading as States Finance Company, makes a practice of writing offensive letters to purchasers of pictures or frames. The letters are issued in serial form, a particular form or number in the series being used to cover a given situation, the failure to pay the note being treated, at first, as an oversight. The following among other statements, were, and are, being made in letters written by States Finance Company to purchasers of pictures from the respondents:

- * * * we will be reluctantly obliged to turn the matter over to a collection bureau
- * * *. This may cause you considerable embarrassment, as well as extra expense,
- * * *.

In many instances purchasers are harassed, frightened and intimidated into paying amounts of money to the respondents for which said purchasers are not legally obligated.

The aforesaid false and misleading statements, representations, acts, practices and methods used 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. 6. A crayon is a pencil-shaped piece of colored clay, chalk or charcoal used for drawing upon paper. A crayon drawing is the act or art of drawing with crayons. A drawing is a representation produced by the art of drawing; a work of art produced by pen, pencil or crayon. The pastel, in art, is a colored crayon made of 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 in plastic oil colors on canvas, linen or other material, without the aid of photography.

PAR. 7. In the course and conduct of their business, respondents' selling and distributing methods are directed primarily to accomplish the sale of a picture frame at an exorbitant price, and respondents' various activities and representations in securing contracts for portraits are used to enable respondents to contact the purchaser for an opportunity to sell picture frames of cheap and inferior quality at prices which are far in excess of the prices at which frames of similar quality usually and customarily sell for in the ordinary course of business.

PAR. 8. 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. 9. The use by the respondents of the aforesaid acts, practices and methods in connection with the offering for sale and sale of said products in commerce, as aforesaid, 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 and the nature of the business conducted by respondents, and has led, and does lead, purchasers erroneously and mistakenly to believe that the representations and implications so made and used by respondents are true, and causes a substantial number of the purchasing public to purchase said products under the mistaken and erroneous belief that they are securing high grade, quality portraits, paintings, oil paintings or miniatures and picture frames of exceptional value.

The use by respondents of the aforesaid acts, practices and methods has the tendency and capacity to, and does, unfairly divert trade to respondents from their competitors engaged in the sale and distribution of genuine original oil paintings, and tinted or colored enlargements or miniatures of photographs and snapshots in commerce among and between the various States of the United States and in the District of Columbia, who truthfully represent their said products. As a consequence thereof, substantial

injury has been done, and is now being done by respondents to competitors in said commerce.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, including said understandings, agreements, combinations and conspiracies, and the things done thereunder and pursuant thereto and in furtherance thereof, 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 December 2, 1941, issued its complaint in this proceeding, and on March 10, 1942, issued its amended complaint, charging the respondents named in the caption hereof with the use of unfair methods of competition in commerce in violation of the provisions of said act. After certain respondents filed their answer in this proceeding, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by these respondents through their counsel and by Richard P. Whiteley, Assistant Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, might be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and that the Commission might proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding as to the respondents executing said stipulation without the presentation of argument or the filing of briefs, counsel for said respondents expressly waiving the filing of report upon the evidence by the trial examiner. Certain respondents answered admitting some of the allegations of fact set forth in the amended complaint, and other of the respondents filed admission answers. The respondents filing partial or full admission answers waived hearings, the filing of the trial examiner's report upon the evidence, and all intervening procedure. Thereafter, this proceeding regularly came on for final hearing before the Commission on said amended complaint, answers thereto, and said stipulation as to the facts, said stipulation having been approved, 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 this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. (a) Respondent, Frank F. Woelfel, is an individual, trading as Woelfel Studio and having his principal office and place of business at 806 West Washington Boulevard, Chicago, Ill. Said respondent, trading as Woelfel Studio, is now, and for several years last past has been, engaged in the production, sale, and distribution, among other things, of colored enlargements or miniatures of photographs and snapshots and the sale of frames for such pictures.

•(b) Respondent, Fred E. Willis, an individual, is a brother-in-law of respondent, Woelfel, and for more than three years last past has been em-

ployed by respondent, Woelfel, as office manager, bookkeeper, and accountant for the Woelfel Studio, handles its funds, has charge of the office employees, and conducts various other office, business, and financial affairs of said studio. He has conducted, and now conducts, the operations of a collection agency known as States Finance Company. All of these activities of respondent, Willis, are carried on from the offices of Woelfel Studio at 806 West Washington Boulevard, Chicago, Ill.

(c) The respondents described in this subparagraph (hereinafter frequently referred to as "operators") are engaged, directly and through their respective employees, in the sale and distribution to members of the consuming public of products of the Woelfel Studio purchased from the said Woelfel. Except as otherwise stated in this subparagraph, each of these operators uses the offices of respondent, Woelfel, as the address for and designation of the location of the business carried on by him under a trade name, or otherwise, in the products of the Woelfel Studio.

(c-1) Respondent, C. W. Short, is an individual, trading and doing business as Modernistic Art Company.

(c-2) Respondent, R. D. Minyard, is an individual, who formerly traded as Central Art Company and now trades as Modern Art Company.

(c-3) Respondent, Ray Pietz, is an individual, who formerly traded as National Arts Association and now trades as National Art Distributor.

(c-4) Respondent, O. D. Redd, is an individual, who formerly traded as Central Art Company and now trades as Modern Art Company.

(c-5) Respondent, Frank H. Munger, is an individual, who has traded under various names, including his own.

(c-6) Respondent, Clayton G. Brown, is an individual who formerly used the offices of respondent Woelfel as the address for and designation of the location of his business but who now trades as Clayton G. Brown Art Service, with his office and principal place of business at 296 Broad Street, Salamanca, New York.

(d) The respondents described in this subparagraph are, or have been for a number of years last past, employees of operators and have aided, assisted, and cooperated with such operators in selling and distributing Woelfel Studio products to members of the consuming public. Various of these respondents have served in different capacities, such as "crew managers," "road managers," "proof passers," "delivery men," "salesmen," and "sales agents." These respondents (hereinafter frequently referred to as "sales agents") have used, or now use, the Woelfel Studio, 806 West Washington Boulevard, Chicago, Ill., as the address for and designation of the location of the business represented by them. These respondents are E. B. Cook; L. E. Cox; E. W. Hunsucker; S. B. Hunsucker; J. E. Liles; Bertie Mae Long; Jewel Long; W. B. Lovings; J. L. Maciborski, who also uses the name J. L. McLean and who is referred to in the complaint by both names; Kathryn Maciborski; M. E. Slusser, who is referred to in the complaint as R. E. Murphey and who uses that name; Paul F. Nelson; Gladys E. Powell; Leslie E. Powell; Al C. Sachs; Belle Short; Mrs. C. W. Short; E. D. Short; and H. B. Short.

(e) As to the other respondents named in the complaint, because of failure to secure service upon them or for other reasons appearing in the record affecting their inclusion in this proceeding, the following respondents are not hereafter referred to in these findings: R. E. Hardy, H. L. Fellers, F. E. Findlay, L. R. Grim, Orville A. Hime, William R. Klaus, Alfred F. McCants, C. S. Orr, J. H. Robinson, Arthur G. Russell, Otto F.

Schneider, A. M. Thompson, Hal Thompson, R. Ware, C. Belgard, Bob Bergin, B. F. Cobb, Mrs. E. B. Cook, J. P. Conrad, Leo Crowder, H. F. Dindinger, C. G. Frye, J. Alene Frye, James F. Gautney, J. L. Gilmore, George E. Grabow, Mary Granata, Troy Gravette, H. Guteman, G. B. Harshbarger, C. E. Heard, F. H. Herd, M. Hollingsworth, Rufus Hudson, Ellen Lanning, Morris A. Lee, Jennell Long, W. B. Lorkup, George McCullough, Delmer McLaughlin, Mrs. Delmer McLaughlin, Dorothy Notzen, Frank Parker, Bill Reed, F. Y. Robinson, Mrs. J. H. Robinson, J. C. Rosser, R. T. Sherrod, Reba Stone, W. G. Wagner, George Westphal, Harold Wolcott, Alonzo Williams, and R. M. Ziebell.

PAR. 2. In the course and conduct of their business in the sale and distribution of the products of the Woelfel Studio, respondents herein (except as otherwise specifically stated) have caused such products, when sold, to be transported from the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia, and have maintained a course of trade in said products in commerce between and among the various States of the United States and in the District of Columbia. Respondent, Fred E. Willis, in his capacity as an employee of respondent, Woelfel, has aided, assisted, and cooperated in maintaining and carrying on a course of trade in commerce in the products of the Woelfel Studio; and in his conduct of the debt collection business designated as States Finance Company, more particularly hereinafter described, has maintained a current of trade in commerce among and between various States of the United States.

PAR. 3. The several respondents herein have been, and are now, engaged in direct and substantial competition with various corporations, partnerships, and individuals engaged in the sale and distribution in commerce between and among the various States of the United States and the District of Columbia of tinted or colored enlargements or miniatures of photographs or snapshots, genuine oil paintings and miniatures, water color paintings, and frames for such pictures.

PAR. 4. (a) In carrying out the plan and practice for the sale of the products of respondent, Woelfel, various operators have adopted and employed trade names such as United Art Company, Atlas Portrait Company, Modernistic Art Company, Windsor Studio, Superior Artists Association, Royal Art Studio, Real Art Portrait Company, Windsor Portrait Service, American Art Association, Modern Art Company, Central Art Company, and National Art Association. With the consent and active assistance of respondent Woelfel, operators have used the Chicago address of the Woelfel Studio as the address of the businesses conducted by them under the trade names used by them. Respondent, Woelfel, had the authority to, and did, receive and open mail addressed to the trade names used by respondent operators. Such of the complaints received in this correspondence as Woelfel could handle, he did handle by writing letters on behalf of respondent operators on their trade name stationery kept in his office, signing such correspondence with the particular trade name to which the complaint was addressed. Such of his correspondence as Woelfel could not handle, he forwarded to the operator to whom it was addressed. Respondent operators used various contract forms, order blanks, and credentials made up in the particular trade name used by them for contacting and dealing with members of the consuming public. Typical of the form of the order blank used by respondent operators is the following:

Art Co.

Cable Address
"WOLSTU"

....., 193—
Post Office State Date

You will please make for the undersigned, from the Photograph delivered to your representative this day,; finely finished Painting and deliver the same to me on or about the day of, 19.., the painting to cost me \$. Amount paid your representative \$., leaving a balance of \$., which I agree to pay at the time of delivery.

THE ABOVE PRICE DOES NOT INCLUDE FRAMES OR GLASS COUNTER-
MANDS NOT ACCEPTED.

This order is given you upon the further consideration that your company will deliver the paintings so ordered in suitable frames, which the undersigned is entitled to accept upon payment of a reasonable price, if the frames are satisfactory. In the event the undersigned does not accept the frames and pay for same, they are to be delivered forthwith to your company's deliveryman.

Received by
Representative Customer

(b) As a result of the use by respondent operators and their respective sales agents of the aforesaid trade names with the business address of 806 West Washington Boulevard, Chicago, Ill., purchasers and prospective purchasers were led to believe that they were contracting or dealing with duly constituted representatives or sales agents of an actually existing and operating art studio, art association, or art company the name and address of which appeared on documents employed by said operators and their sales agents. As a result of the belief so engendered, purchasers and prospective purchasers have confused the character of the business operated by said operators and their sales agents with that of various organizations of similar name and designation but which, like Woelfel Studio, are actually conducting an art studio. The respondent operators have, through the use of such trade names and the business address furnished by respondent Woelfel, obtained prestige and standing with members of the purchasing public. As a further result of the plan followed in the sale of the products of Woelfel Studio, respondents, Frank F. Woelfel, Fred E. Willis, R. D. Minyard, Ray Pietz, O. D. Redd, Frank H. Munger, and Clayton G. Brown have been enabled to evade liability to purchasers for the statements, representations, and sales methods used by them and their sales agents in connection with the sale and distribution of the said products of Woelfel Studio.

(c) In truth and in fact, none of respondent operators or their sales agents has actually owned, operated, or conducted, directly or indirectly,

any art studio, art institute, art company, or place of business where colored enlargements or miniatures of photographs or snapshots are made at 806 West Washington Boulevard, Chicago, Ill., or at any other place, or has owned, operated, or controlled the photographic equipment and paraphernalia essential in producing such enlargements or miniatures, or has had in his employ or under his control or direction any persons skilled in producing the products offered for sale by them. Although the respective trade names and the Chicago address used by respondent operators indicate an existing business conducted by them, in truth and in fact the business operations conducted at Woelfel Studio, 806 West Washington Boulevard, Chicago, Ill., are conducted solely by respondent, Woelfel, who possesses the equipment and paraphernalia and employs the personnel necessary for making the products sold by him to respondent operators and by such operators and their sales agents to members of the consuming public.

PAR. 5. (a) The plan for selling and distributing products of the Woelfel Studio includes the conduct of the operations of a collection agency known as States Finance Company by respondent, Fred E. Willis. The operators have made it a practice to have purchasers of pictures and frames sold by them execute notes for any balance due on such purchases. These notes are usually executed upon printed forms bearing the trade name of the operator and the address "806 West Washington Boulevard, Chicago, Illinois." Through understanding with respondent Woelfel, operators have delivered or assigned and delivered such notes taken from their customers to States Finance Company and transmitted such notes from various other States to the States Finance Company in Chicago, Ill., for collection, and in pursuance of this plan, States Finance Company has furnished to operators printed envelopes for the use of their customers in remitting installment payments to States Finance Company. In instances where makers of the notes fail or refuse to pay or unduly delay payments on notes delivered by operators to the States Finance Company for collection, the States Finance Company addresses communications to such debtors seeking payment. For this purpose it uses a series of form letters which are mailed from Chicago, Ill., to debtors in other States. Various of these form letters contain statements such as:

We cannot understand your failure to reply to our previous letters relative to your past due obligation. Your note was accepted in good faith, and we are sure that you have been unable to make payment because of conditions beyond your control. In any event we are entitled to our money or a prompt explanation as to why we have not received remittance.

* * * * *

We explained in a previous letter * * * we are strictly a finance company and have nothing whatever to do with the transactions of any other organization. When you signed a note in the amount of you received certain merchandise, and on the strength of your signature we paid for that merchandise at the time we procured the note. The entire obligation is now directly to us and we must look to you for entire settlement. * * *

(b) As a matter of fact, said notes are delivered to the States Finance Company with or without endorsement, and said company makes a charge for each note sent it for collection whether or not collection is successfully made. Operators with satisfactorily established credit maintain running accounts with respondent Woelfel. These accounts are credited with

amounts collected by States Finance Company on notes placed by them with States Finance Company for collection and their accounts are debited with the charges for Woelfel Studio products sold to them. No separate set of books is kept by States Finance Company, and respondent, Willis, keeps the operators' accounts on books of the Woelfel Studio. All monies of Woelfel Studio and States Finance Company are deposited in the bank in the name of Woelfel Studio and any amounts due operators on account of the collection of notes or as a result of the aforesaid running accounts kept with them are paid by check of the Woelfel Studio. Although States Finance Company is operated from the offices of the Woelfel Studio, it uses the address "104 North Halstead Street, Chicago, Illinois," but this address is in fact a side entrance to the Woelfel Studio, the main entrance being 806 West Washington Boulevard, Chicago, Ill.

(c) The use of representations by States Finance Company such as those set out above has the capacity and tendency to induce, and in fact has induced, makers of notes placed with the States Finance Company for collection to believe that said company is an innocent holder for value of the notes and that the maker must look to that company in connection with matters and questions relating to the products in the settlement for which the note was given. In truth and in fact the States Finance Company has not paid any sum or given anything of value for the notes on which it seeks payment; said notes actually continue to be the property of the operator in whose favor they were originally executed; and in the event of failure to collect the notes they are ultimately returned to the operator who secured them and who stands any loss involved. The true function and purpose of the States Finance Company, was, and is, to aid and assist in the business operations conducted by the several respondents in the sale and distribution of products of the Woelfel Studio.

PAR. 6. (a) Respondent operators and the various sales agents employed by them in different capacities such as "crew managers," "road managers," "proof passers," "delivery men," "salesmen," or "sales agents," in making and seeking to make sales of Woelfel Studio products to members of the purchasing public, designate and describe the pictures being offered as "paintings" or "portrait paintings," and in instances where an order is secured use a contract form for such order similar to the form heretofore set out in subparagraph (a) of paragraph 4 hereof. In the course of their dealings with members of the purchasing public, respondent operators and their sales agents have exhibited to purchasers and prospective purchasers purported samples of the type of work being offered and said pictures on occasion have been described by such respondents as "paintings" or "oil paintings" or "portrait paintings" or "paintings finished in oil by hand," and as being sold or delivered at a "reduced price" or an "advertising price," as a "special introductory offer," or at the "cost of production." On occasion, various respondent operators or sales agents, in obtaining orders for pictures, make the above representations in connection with the use of a "draw" in the operation of which the customer is induced to take a "chance" by drawing from a number of envelopes containing slips of paper, one being a so-called "lucky coupon" or "lucky certificate." It is represented that the purchaser who draws the so-called "lucky coupon" or "lucky certificate" is entitled to receive a \$25 or a \$30 hand-painted painting or hand-painted portrait for only \$6.95 or some comparable sum (at various times such offers are made at varying prices). The said envelopes are so manipulated by respondent operators or their

sales agents that an acceptable customer invariably draws a "lucky coupon" or "lucky certificate."

(b) In truth and in fact the Woelfel Studio products exhibited to customers or prospective customers by respondent operators or their sales agents as samples or specimens are carefully selected products. In various instances, due to the acceptance from customers of photographs or snapshots which are represented by operators or their sales agents as being suitable but which are photographically inferior and fundamentally incapable of being used for producing good enlargements or miniatures, respondent Woelfel is unable to produce from such photographs or snapshots a finished product equal in appearance to the sample which has been displayed to the purchaser. A painting is understood by artists, photographers, and the general public as an original representation by a painter of a design, image, or object on a surface by means of paint, either pastel, water color, or oil, a freehand image painted directly on the surface without the intervention of any mechanical means such as a camera. A water color is a painting with pigments for which water and not oil is used as a solvent. The so-called paintings sold and distributed by respondents are not paintings and are not finished in oil by hand. Such pictures do not conform to the established belief of the public as to what constitutes a painting, nor do said pictures constitute paintings as understood by artists who paint pictures or by photographers who color photographs. The pictures sold by respondents are in fact colored photographs, enlargements or miniatures, as the case may be, produced by making a photographic negative of the photograph furnished by the customer through the use of special photographic equipment. An enlargement, or a reduction in the case of a miniature, is then made from the negative on especially prepared paper which will take liquid color. The photographic enlargement or miniature thus made is then colored with the use of water color or other powdered pigments soluble in water sprayed upon the photographic reproduction through the use of an air brush operated by compressed air, and a portion of the colors is supplied through the use of a hand brush. The so-called "draw" is a deceptive scheme conceived for the sole purpose of inducing prospective purchasers to believe that if they draw so-called "lucky coupons" or "lucky certificates" they are thereby placed in a position of distinct financial advantage in purchasing a "painting" or "portrait." Said coupon or certificate gives the holder thereof no advantage in price whatever over any other purchaser. The pictures sold by operators or their sales agents, either by the use of the "draw" or otherwise, are not, and have not been, sold at any "reduced price" or "advertising price," at any "special introductory offer," or "at the cost of production." Said pictures do not have, and have not had, any \$25 or \$30 sales price or value or any sales price or value approximating such sums. On the contrary, the prices at which sales are made are the regular and customary prices at which such pictures are sold in the ordinary course of business.

PAR. 7. In various instances respondent operators and their sales agents make no reference or mention of the frame at the time a customer is being solicited to order a picture. When a sale is made, a second sales agent or "delivery man" calls upon the customer at a later date with the finished picture mounted, as a rule, in an expensive type of frame, and endeavors to sell the customer this frame for the picture. Pictures and frames produced by Woelfel Studio and thus offered by operators and their sales agents are generally hexagonal in shape, with a raised or convex surface. Various

customers 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 the frame on account of its price, quality, or design, the customer on occasion is informed by the "delivery man" that a frame for the picture cannot be purchased from any source other than through his company, that the company he represents manufactures the only frame that will fit the picture, that the picture will not hold its color or be of any value unless it is framed. While frames such as those sold by respondents may be obtainable from frame manufacturers, such frames are not ordinarily obtainable in photographic supply stores or other stores accessible to the consuming public; and in the event of the failure or refusal of a customer to purchase a frame, respondents do not make it a practice to inform the customer where a frame can be obtained. In the cases of respondents, Frank F. Woelfel, Fred E. Willis, R. D. Minyard, Ray Pietz, O. D. Redd, Frank Munger, and Clayton G. Brown, on occasions where a customer finally refuses to buy a frame from the second sales agent or "delivery man," such sales agent in some instances has refused to deliver the completed picture regardless of whether or not it has been paid for in full, and on occasion has refused to return the original photograph loaned by the customer until the frame is ordered. In these cases there has been no agreement or understanding to the effect that photographs or snapshots loaned or submitted by purchasers are to be retained by respondents until a frame is purchased or payment is made of any sum claimed to be due. On the contrary, purchasers are advised that photographs loaned or submitted by them will be returned at the time the finished picture is submitted. The practice of supplying pictures cut into unusual shape and fitted into frames of corresponding unusual shape and design for which suitable substitute frames are difficult to obtain in the event respondents' frame is refused, and the practice of withholding delivery of a picture paid for in whole or in part or refusing the return of the photograph or snapshot supplied by the customer until a frame is purchased from respondents, are calculated to force the customer into buying something he did not originally intend to buy; namely, a frame, and these sales plans place in the hands of operators and their sales agents a means to effectuate their purpose of thus selling a frame in addition to the picture already sold to the customer.

PAR. 8. The means and methods used by respondents, as aforesaid, constitute a well coordinated plan for selling and distributing Woelfel Studio products to the public, and the several respondents have participated and cooperated therein, as heretofore found, to induce and promote the distribution of such products.

PAR. 9. The use by respondents of the aforesaid methods and false and misleading statements and representations has had, and now has, a tendency and capacity to, and does, mislead and deceive a substantial number of the purchasing public into an erroneous and mistaken belief concerning respondents' business and an erroneous and mistaken belief that such statements, representations, and implications are true. As a result of the erroneous and mistaken belief so induced, a substantial portion of the public has purchased respondents' said products, and as a consequence thereof trade has been diverted unfairly to respondents from their competitors who are likewise engaged in the sale and distribution of similar products in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices, 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 amended complaint of the Commission, a stipulation as to the facts entered into between certain respondents herein and Richard P. Whiteley, Assistant Chief Counsel for the Commission, providing, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon said respondents its findings as to the facts and its conclusion based thereon and an order disposing of the proceeding, and the answers of certain other of respondents admitting various allegations of fact set forth in the amended complaint and waiving further hearings as to said facts and all intervening procedure, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents, Frank F. Woelfel, Fred E. Willis, R. D. Minyard, Ray Pietz, O. D. Redd, Frank H. Munger, and Clayton G. Brown, individuals, their respective representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of tinted or colored photographs, or enlargements or miniatures of photographs or snapshots, and of frames therefor, do forthwith cease and desist from:

1. Representing in any manner, directly or by implication, that colored or tinted photographs, photographic enlargements, or reductions are paintings.

2. Using the terms "oil painting," "portrait painting," "hand painted," or "hand painted portrait," or the word "painting," either alone or in conjunction with any other words or terms, to designate, describe, or refer to colored or tinted photographs, photographic enlargements or reductions, or other pictures produced from a photographic base or impression.

3. Using a "draw" or "draw contest" or so-called "lucky coupons" or "lucky certificates," or any similar device, plan, or scheme, so as to represent, indicate, or imply that any customer will obtain any substantial discount or reduction in the price of any picture or pictures.

4. Representing, in connection with pictures being offered or sold in the regular course of business at the usual and customary prices therefor, that such pictures are being offered or sold at a reduced price as an advertising offer or introductory offer, or representing in any manner that a purchaser is receiving an advantage in price not available to all purchasers.

5. Representing that a picture to be made and delivered will be equal in quality and appearance to any sample displayed to the customer unless in fact the picture thereafter delivered is of the same quality, design, and workmanship as said sample.

6. Using trade names consisting of or including terms such as "Art

Studios," "Art Institute," "Art Association," or any other fictitious name of similar import, unless the respondent using such name or names actually owns, operates, conducts, or controls an organization or establishment of the character indicated and comprehended by the trade name so used.

7. Misrepresenting or authorizing, permitting, or cooperating in the misrepresentation of the financial responsibility, prestige, or standing of respondents, or any of them, or of the character or extent of such business, by falsely claiming to be connected with an operating established house or by deceptively using the business address of such established house as and for a business allegedly operated by respondents, or any of them, and from misrepresenting through the use of fictitious trade names and misleading State and post office addresses the place, character, and extent of the business actually conducted.

8. 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 be used only in a specially designed, odd-style frame that cannot ordinarily be obtained in stores accessible to the consuming public, and that it will be difficult or impossible to obtain a frame to fit the picture from any source other than respondents.

9. Representing that States Finance Company, or any similar collection agency operated by or for respondents, is an innocent purchaser for value without notice of notes for unpaid balances due on pictures or frames sold to the consuming public by respondents, or has in good faith discounted such notes or paid out any money or given anything of value in connection with the alleged purchase of such notes.

10. Failing or refusing, in cases where pictures have been ordered, completed, and paid for, to deliver to the customer the completed picture or return the photograph or snapshot previously loaned by the customer for use in producing the picture.

It is further ordered, That respondents, C. W. Short, E. B. Cook, L. E. Cox, E. W. Hunsucker, S. B. Hunsucker, J. E. Liles, Bertie Mae Long, Jewel Long, W. B. Lovings, J. L. Maciborski, also known as J. L. McLean, Kathryn Maciborski, M. E. Slusser, also known as R. E. Murphey, Paul F. Nelson, Gladys E. Powell, Leslie E. Powell, Al C. Sachs, Belle Short, Mrs. C. W. Short, E. D. Short, and H. B. Short, individuals, their respective representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of tinted or colored photographs, photographic enlargements or miniatures of photographs or snapshots, and of frames therefor, do forthwith cease and desist from the acts and practices forbidden in paragraphs numbered 1 to 9 inclusive, set out above.

It is further ordered, That for reasons appearing in the findings as to the facts herein this proceeding be, and hereby is, closed as to respondents, R. E. Hardy, H. L. Fellers, F. E. Findlay, L. R. Grin, Orville A. Hime, William R. Klaus, Alfred F. McCants, C. S. Orr, J. H. Robinson, Arthur G. Russell, Otto F. Schneider, A. M. Thompson, Hal Thompson, R. Ware, C. Belgard, Bob Bergin, B. F. Cobb, Mrs. E. B. Cook, J. P. Conrad, Leo Crowder, H. F. Dindinger, C. G. Frye, J. Alene Frye, James F. Gautney, J. L. Gilmore, George E. Grabow, Mary Granata, Troy Gravette, H. Gute-man, G. B. Harshbarger, C. E. Heard, F. H. Herd, M. Hollingsworth, Rufus Hudson, Ellen Lanning, Morris A. Lee, Jennell Long, W. B. Lorkup, George McCullough, Delmer McLaughlin, Mrs. Delmer McLaughlin,

Order

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Dorothy Notzen, Frank Parker, Bill Reed, F. Y. Robinson, Mrs. J. H. Robinson, J. C. Rosser, R. T. Sherrod, Reba Stone, W. G. Wagner, George Westphal, Harold Wolcott, Alonzo Williams, and R. M. Ziebell, without prejudice to the right of the Commission, should the facts so warrant, to reopen the same and resume trial thereof in accordance with its regular procedure.

It is further ordered, That respondents shall, within 60 days after the 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

HAPPY HOSTESS CANDY COMPANY, INC., AND HARRY RACHLIN, PRESIDENT OF HAPPY HOSTESS CANDY COMPANY, INC.

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

Docket 4842. Complaint, Sept. 29, 1942—Decision, Feb. 8, 1945

Where a corporation and an individual, its president and general manager, engaged in interstate sale and distribution of various kinds of candy, including its "Vanity Fair," "Cow Boy Bunny," and "Brazil Nut" assortments, which were so packed and assembled as to involve use of games of chance, gift enterprizes or lottery schemes when sold and distributed to the consuming public under such arrangements, as typical, that chance selection of certain numbers on a ten section, 550 hole punch board secured the customer for the 2 cents paid, one half pound "Picture Package" box of candy, the last punch in each of the first 9 sections received a one-pound "Picture Package," and the last punch on the board received the two-pound "Framed Picture Package," others receiving nothing for their money—

Sold and distributed such assortments to jobbers and wholesalers, and thereby supplied to and placed in the hands of others the means of conducting a lottery in the sale of their products in accordance with aforesaid sales plans; contrary to an established public policy of the United States Government and in competition with others who did not use any sales method involving chance or contrary to public policy;

With the result that many persons were attracted by said sales plan and the element of chance therein, and were thereby induced to buy and sell their candy in preference to that of said competitors, and with tendency and capacity thereby unfairly to divert trade in commerce from said competitors to them:

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

As respects the denial of the president of a corporation charged along with it with the use of lottery methods in sale and distribution of candy, of any individual responsibility for such corporate acts, and his assertion that as a member of its Board of Directors, he opposed and voted against the use of such methods, but that the policy of the company was determined by the majority of the Board: Where it appeared that for some eleven years immediately preceding the organization of the corporation in question, he was the vice president of the B Candy Company of which he and his wife owned about 45 percent of the stock; that after the issuance of a complaint against said company by the Commission charging it with the use of lottery methods, but before the issuance of a cease and desist order, he and his wife sold their stock therein; that among the incorporators of the present corporation and officers thereof and members of its Board were two former salesmen of said B Candy Company who had a substantial following in the trade for punch board deals, and participated in the organization and operation of the instant company upon the understanding and condition that it would engage in the sale of punchboard deals; and that he and his wife owned more than half the stock; the Commission concluded that any objections to punchboard deals by said individual were *pro forma* only and that in fact he aided, cooperated with, and assisted said corporate concern in such acts and practices.