

IN THE MATTER OF

J. CLAUD GRIFFIN, TRADING AS COMMERCIAL ART COMPANY, ETC. AND DANIEL G. RIES, TRADING AS PROGRESSIVE PORTRAIT COMPANY

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

Docket 5133. Complaint, Feb. 26, 1944—Decision, Mar. 24, 1945

Where an individual engaged in interstate sale and distribution of colored or tinted enlargements of photographs and of frames therefor, through house-to-house sales agents whom he supplied with small photographs or miniatures which purported to be samples of his work, and which represented a high degree of photographic and artistic skill and were very attractive in appearance—

- (a) Represented to prospective purchasers, who were induced to produce one or more photographs for examination, that such photographs would make excellent enlargements which would be similar in quality, finish, color, etc., to the aforesaid miniatures or samples, and frequently referred to the enlargement as a "painting" or a "hand painted portrait," stating that it would be hand painted by artists; The facts being that the enlargements produced from photographs so submitted were in no way comparable to such miniatures, but were of very inferior quality and frequently worthless, and they were in no sense paintings or hand painted portraits but were merely cheap photographic enlargements on which little or no hand work was done and on which the coloring was supplied through an air brush;
- (b) Falsely represented at times that the price quoted for the enlargement—usually \$2.98—represented a special or introductory offer and was lower than the price at which they were usually sold;
- (c) Concealed from customers, when the pictures were ordered, that the finished product would be so shaped and designed that it could be used only in an odd-style frame not ordinarily obtained in stores accessible to the consuming public, and that it would be difficult or impossible to obtain a frame to fit the picture from any source other than himself, and failed to reveal said facts until the customer was called upon by his second representative or "proof passer," who exhibited what purported to be a proof in black and white of the proposed enlargement, for the ostensible purpose of obtaining the necessary color specifications, collected the purchase price or the balance due thereon, and for first time sought to secure the sale of a frame at an exorbitant price ranging from \$5 to \$22, failing which said individual took little or no further interest in supplying the pictures ordered, and customers declining to buy frames frequently encountered unreasonably long delays in obtaining the pictures and the return of the original photographs; and
- (d) Made use of various addresses as his places of business, which were in fact merely the addresses of persons or firms from whom he obtained the products he sold and who permitted use of their addresses as an inducement to him to purchase their products; and

Where a second individual, from whom the former purchased enlargements—

- (e) Permitted the use by the former of the address at which his photograph enlarging business was located and thereby aided and cooperated with the former in carrying on the practices above described;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the character, quality, and value of the products

sold by the individual first referred to and with respect to his identity and business status, and thereby cause its purchase of substantial quantities thereof:

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

Before *Mr. J. Earl Cox*, trial examiner.

Mr. Marshall Morgan for the Commission.

Mr. George Little, of Pittsburgh, Pa., for J. Claud Griffin.

Mr. Arthur D. Gatz, of Pittsburgh, Pa., for Daniel G. Ries.

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 J. Claud Griffin, individually, and trading as Commercial Art Company, and formerly trading as Modern Art Company and American Arts, and Daniel G. Ries, individually, and trading as Progressive Portrait Company, 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, J. Claud Griffin, is an individual, trading as Commercial Art Company, with numerous temporary business and post office addresses, the last known being located at Room No. 407, 929 Fifth Avenue, Pittsburgh, Pa., and whose last known home address was 720 East Diamond Street, North Side, Pittsburgh, Pa. Among other temporary business and post office addresses formerly employed by respondent were: 235 West Water Street, Syracuse, N. Y.; 506 The Arcade, Cleveland, Ohio; 929 Fifth Avenue, Pittsburgh, Pa.; and 608 Washington Trust Building, Pittsburgh, Pa.

Respondent, Daniel G. Ries, is an individual, trading as Progressive Portrait Company, with his principal place of business located at Room No. 407, 929 Fifth Avenue, Pittsburgh, Pa.

PAR. 2. Respondent, J. Claud Griffin, is now and for more than five years last past has been, engaged in the sale and distribution of tinted or colored enlargements of photographs and snapshots and of frames therefor. Respondent, Griffin, causes and at all times mentioned herein has caused said products, when sold, to be transported from the State of Pennsylvania, or other points of origin, to the purchasers thereof located in various other States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his said business, respondent, Griffin, has been and is now engaged in direct and substantial competition with the various corporations, partnerships, and individuals likewise engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia, of tinted or colored enlargements of photographs and snapshots and of frames therefor.

PAR. 4. Respondent, Griffin, on the one hand, and respondent, Ries, on the other hand, in connection with the conduct of the said business of respondent, Griffin, for several years last past, have entered into and carried

out agreements with each other involving the use of false, misleading and deceptive acts, methods and practices to induce the purchase of respondent, Griffin's, said products, as more fully hereinafter alleged.

PAR. 5. Respondent, Griffin, trading as Commercial Art Company, and formerly trading as Modern Art Company and American Arts, and operating from the respective addresses, Room No. 407, 929 Fifth Avenue, Pittsburgh, Pa.; 234 West Water Street, Syracuse, N. Y.; 506 The Arcade, Cleveland, Ohio; 929 Fifth Avenue, Pittsburgh, Pa., and 608 Washington Trust Building, Pittsburgh, Pa., and from various other addresses to the Commission unknown, in effecting the sale of said tinted and colored enlargements of photographs or snapshots and of frames therefor, operates and has operated in substance as follows:

1. Respondent, Griffin, trading as aforesaid, sells his products to members of the consuming public through the medium of salesmen or sales representatives appointed by him as agents in his behalf. Said salesmen or sales agents are furnished by respondent with appropriate credentials, order blanks or certificates, or other forms for use in taking orders. Said agents are further equipped with attractive samples of colored enlargements, to be represented by them as having been done by Commercial Art Company or other company allegedly conducted and operated by respondent, Griffin, and to be typical of the fine work done by such companies.

2. The first sales agent engaged in house-to-house canvassing of members of the consuming public approaches the customer for the primary purpose of obtaining an order for a colored enlargement. In pursuance of respondent's sales plan, the contract price asked for an enlargement is to be obtained before there is any mention made of a frame for the enlargement. At no time does the first or contact sales agent make reference to the matter of the purchase of a frame. A customer is shown handsome samples of respondent's work, made from carefully selected photographic subjects, and it is represented that for the sum of \$2.98, or other comparable sum, the agent's company will make the same type and grade of product for the customer.

3. Said product from time to time is represented variously as a "portrait," "hand-painted portrait," "hand painting in oil," "hand-painted portrait on canvas," and as a "silk brocade." It is further represented from time to time by respondent's said sales agents that the "portrait" or "painting" has a regular sales value or price ranging from \$15.00 to \$30.00, or other comparable sum, and that the product is being offered at a "special producing price, unframed," or for a small "producing charge," or that the offer is being made in connection with an "advertising program" to "introduce this grade of art," for the price of \$2.98. From time to time it is represented in the case of children that the "portrait" or "painting" to be made will be entered in a special Blue Ribbon Baby Contest.

4. Having made these or similar representations, in whole or in part, respondent's said sales agents then make request for the inspection of family photographs. A photograph pronounced an excellent subject for a "painting" is finally selected and a loan of the same is made by the customer to the salesman at the latter's request for use in making the "portrait" or "painting." The salesman, if questioned in such connection by the customer, assures the customer that special care will be taken of the photograph and that it will be safely returned to the customer along with the finished "portrait" or "painting."

The first or original contact sales agent taking the order for a "portrait" or "painting" collects part payment thereon, usually a dollar, and departs with the treasured family photograph which has been entrusted to him.

In a few weeks a second sales representative of respondent, designated to the customer as "field artist" and known to the trade as a "verifier" or "proof passer," arrives at the home of the customer with a rough photographic proof of an enlargement, collects the balance due on the picture or "painting," and obtains instruction for the coloring to be employed in making the "painting."

5. In further connection with the sale of colored photographic enlargements, respondent, Griffin's said sales agents on occasion represent and have represented to customers and prospective customers that the company is putting on a special advertising campaign to get the company established in that community, to introduce its product in the community. Respondent's method of so-called advertising in this relation is to induce the customer to take a chance by drawing from a number of envelopes containing slips of paper, on one or more of which appears the word "Special" or equivalent word or term. Respondent's sales agents represent that the customer who is fortunate enough to draw the "lucky" slip of paper or certificate so marked is to receive a hand-painted oil portrait of any snapshot or photograph on a background of canvas or silk or other durable material, "free" except for the incidental sum of \$2.98 representing the alleged expense of handling or a small producing charge. Respondent also represents in this connection that this enlargement is regularly sold at prices ranging from \$15.00 to \$30.00, and when the "draw" has been completed the holder of the "special" or "lucky" slip will be furnished an opportunity to consult with a "field artist" from the company to discuss a sketch made from the photograph and to choose the colors desired. (At various times similar offers are and have been made at different prices.) The said envelopes containing said slips are so manipulated by respondent's said sales representatives that each acceptable customer invariably draws a "lucky" slip of paper or certificate marked "Special" or with some equivalent word or term.

The holders of said "special" certificates or other so-called "lucky" slips are and have been led by the false statements and representations of respondent's said sales agents, and by the "fake" drawing in which the customers were "lucky," to believe that said coupon or certificate places and has placed the holder thereof at a distinct advantage in purchasing a painting or portrait, and such holders are and have been thereby induced to enter into contracts for the purchase of so-called "paintings" or "portraits."

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" or "special" certificate or "lucky slip" and all purchasers may purchase said "paintings" or "portraits" at the price quoted by respondent in making so-called "special introductory and advertising offer." In truth and in fact, said procedure, known to the trade as the "draw," is merely a sales scheme employed to gain entry into the home of the prospective customer and to secure from the customer a photograph or snapshot, and thus more easily facilitate the sale thereafter of a picture and frame.

6. The so-called "portraits," "paintings," "hand-painted portraits," and "hand paintings in oil," and "hand-painted portraits on canvas" or

"silk" sold and distributed by respondent are not portraits in oil or paintings finished or produced by hand in oil colors, nor are they water color paintings or hand paintings or any work of art produced by the art of drawing, but on the contrary are merely cheap, quickly-made photographic reproductions, costing not more than \$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 photographic reproduction in solution, largely through the use of a mechanical device known as an air brush, operated by compressed air. Furthermore, said pictures are not finished on canvas or silk or other durable material, but on cardboard.

In truth and in fact, the so-called tinted or colored photographic reproductions sold and distributed by respondent, Griffin, are different from and greatly inferior in quality, workmanship and appearance to the handsome attractive samples exhibited by respondent's sales representatives when obtaining orders for such products. Further, such products are not sold at an "advertising price," "reduced price," "special introductory price," for the "cost of production" or "absolutely free." Respondent's said colored enlargements do not have any sales price or value of \$15.00 or \$30.00 or other approximate sums, and the sales price of \$2.98 is the regular and customary price for which said products are usually and customarily sold by respondent in the ordinary course of business.

The sales agent represented by respondent, Griffin, to be a "field artist" is not an artist in the sense that such term is ordinarily employed or understood by the public. On the contrary, said so-called "field artist" is nothing more than a follow-up man operating for and on behalf of respondent for the purpose of first collecting any balance due on an enlargement and thereafter selling a frame for such enlargement. Sales contracts obligate the customer to pay \$2.98 when "proof of my portrait is shown." Said contracts also contain the provision, "You are not obligated to order a frame."

Further, in truth and in fact, no arrangement has been entered into or put into operation by respondent, J. Claud Griffin, trading as Commercial Art Company, or trading under any other name, for the conduct of or participation in any baby contest at any time or place, nor for the entry in any baby contest of any colored enlargement sold or attempted to be sold by said respondent Griffin of any child or baby.

7. Having concluded all financial aspects of the transaction relating to the colored enlargement by collecting before the product is completed any balance due thereon, the second sales agent or "field artist" then mentions to the customer for the first time the matter of the sale of a frame for the colored enlargement or "painting." Sales agents are and have been careful to avoid mentioning the matter of the sale of a frame until the transaction involving the picture or "painting" has been fully concluded.

Handsome samples of frames for the unfinished, undelivered, paid-for-in-full picture or "painting" are exhibited to the customer. In the event the customer objects to the purchase of a frame, compelling arguments and practices are employed by respondent's said frame salesman. The customer is variously told that the picture will not hold its colors without a frame and will be "no good," that it will be impossible for the customer to buy elsewhere a frame that will fit and protect the picture for the reason that the picture will have a convex surface and will be octagon in shape.

It is in the sale of frames that profit is realized both by respondent and by his said sales agents. No profit is made by respondent in connection

with the sale of a colored enlargement. Prints cost from 20¢ to 22¢ each, the cost of finishing and coloring the enlargement runs from 60¢ up, and the salesman gets \$1.50 commission on each enlargement sold.

On occasion, sales agents of respondent, interested only in the sale of a frame for profit, have refused to deliver the picture or "painting" and to return the original treasured photograph which had been loaned to the salesman by the customer unless a frame is bought and paid for in full. Respondent's said sales agents from time to time, in cases where customers have declined to purchase frames, have advised that pictures ordered would not be completed and that the customer would be unable to obtain the return of his original photograph unless a frame be purchased, and respondent's agents have thereupon left the house of the customer and have not subsequently returned.

From time to time discourteous and abusive language has been applied by respondent's said sales agents to customers refusing to buy a frame, and unless strong outside pressure has been brought to bear, respondent from time to time has failed or refused to finish and deliver pictures and to return family photographs to customers who did not buy a frame. Requests and complaints from customers have remained unanswered by respondent.

Many customers have been willing to lose the \$2.98 paid by them for the unfinished picture if they could only obtain the return of the treasured family photograph loaned by them. Photographs, the return of which in their original condition had been promised and assured, have on occasion been finally returned badly mutilated or in damaged condition to those refusing to buy a frame.

Purchasers are not advised, and there is no such understanding or agreement in connection with contracts for colored enlargements or frames therefor, that the completion and delivery of an enlargement is conditioned upon the prior purchase of a frame therefor; or that the sale of a frame is to be connected with and made a part of the original transaction, involving only the purchase of a colored enlargement; or that photographs or snapshots loaned or submitted by purchasers of colored enlargements are to be retained by respondent pending the purchase of a frame, or until the payment of any sum alleged to be due to respondent from a customer on a frame or otherwise. On the contrary, purchasers are advised by respondent that photographs lent by them to respondent will be returned at the time the finished enlargement is delivered, this without reference to the matter of a frame, and respondent's sales contracts for colored enlargements contain such assurance and pledge. Contract certificates given by respondent to customers in connection with the sale of a colored enlargement contain and have contained the guarantee or pledge;

We guarantee the safe return of your photograph with the finished work.

Respondent further conceals and has concealed from the purchaser at the time the so-called "portrait" or "painting" is ordered the fact that the finished product will be delivered in an unusual octagon shape with a convex surface, and that it will be impossible for the purchaser thereafter to obtain a frame to fit said portrait from any source except from or through respondent at prices fixed by him.

PAR. 6. Respondent, Daniel G. Ries, trading as Progressive Portrait Company, now operates and for several years last past has operated, in the city of Pittsburgh, Pa., from the address Room 407, 929 Fifth Avenue, Pittsburgh, Pa., a place of business for the making and sale of enlarged and

Complaint

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tinted or colored photographs. Pursuant to the arrangement with respondent, J. Claud Griffin, referred to in paragraph 4 of this complaint, respondent, Griffin, has been permitted by respondent Daniel G. Ries to use, and he uses and has used as his business office and address, the Pittsburgh office and business address of said respondent Ries, namely, Room 407, 929 Fifth Avenue, Pittsburgh, Pa.; and respondent, Griffin, in pursuance of such arrangement has printed and employed in connection with the sale of his products, as aforesaid, order blanks, contract forms, advertising certificates, letterheads, receipt books and other forms containing the name and address, Commercial Art Company, Room 407, 929 Fifth Avenue, Pittsburgh, Pa.

In further execution of said arrangements, respondent, Ries, has forwarded to customers of respondent Griffin from the former's address, Room 407, 929 Fifth Avenue, Pittsburgh, Pa., colored enlargements made by respondent, Ries in his studio for customers of respondent, Griffin, and has likewise shipped from his said address, by further arrangement with respondent, Griffin, frames sold by respondent, Ries, to respondent, Griffin, to fit said enlargements. Customers of respondent, Griffin, trading as Commercial Art Company, are communicated with on stationery bearing the address of Room 407, 929 Fifth Avenue, Pittsburgh, Pa.

In buying the said products of respondent, J. Claud Griffin, purchasers and prospective purchasers believe and they have believed that they are and were contracting and dealing with duly constituted representatives or sales agents of an existing studio or art company whose name appears and has appeared on the various contract forms, order blanks, identification certificates, or letterheads employed by respondent, Griffin, and his said sales agents or representatives.

In truth and in fact, the name Commercial Art Company, with the address of Room 407, 929 Fifth Avenue, Pittsburgh, Pa., is merely that of a trade name employed by respondent, Griffin, in connection with the sale of pictures produced for him by respondent, Daniel G. Ries, in the studio actually operated by the latter at the said Pittsburgh address. In truth and in fact, the name of Commercial Art Company is wholly fictitious in that there is not and has not been any art company or studio in operation or existence at the address Room 407, 929 Fifth Avenue, Pittsburgh, Pa., designated Commercial Art Company or otherwise designated, nor at the addresses 234 West Water Street, Syracuse, N. Y., or 506 The Arcade, Cleveland, Ohio, or 608 Washington Trust Building, Pittsburgh, Pa., conducted by respondent, J. Claud Griffin. Said respondent, J. Claud Griffin, whether trading from the addresses Room 407, 929 Fifth Avenue, Pittsburgh, Pa.; 234 West Water Street, Syracuse, N. Y.; 506 The Arcade, Cleveland, Ohio, or 608 Washington Trust Building, Pittsburgh, Pa., or from other addresses or through other names to the Commission unknown, has not owned, operated, or conducted and does not now own, operate or conduct any art studio, institution, or company, or office, or other place of business in Pittsburgh or elsewhere, and has not had any actual or financial interest in any company, association or other enterprise where tinted or colored enlargements of photographs are or were made; and he does not own, operate, or control nor has he owned, operated, or controlled the photographic or other equipment essential to the production of enlargements. Nor has respondent, Griffin, had in his employ under his control and direction any artists, operators, or persons skilled in photographic technique or in the use of the air brush or paint brush, or skilled

in doing the necessary color work incident to the making of said colored photographic enlargements.

PAR. 7. The use by respondent, Griffin, of the aforesaid trade name, Commercial Art Company, and of the Pittsburgh address, Room 407, 929 Fifth Avenue, Pittsburgh, Pa., as the location of an art studio or company allegedly owned and operated by him, or of other trade names and addresses for the purpose herein described, including the use of the name Commercial Art Company and other trade names in sales talks and on contract and other forms by his respective agents and exhibited by them to customers and prospective customers, and the posting at Room 407, 929 Fifth Avenue, by respondent, Daniel G. Ries, of mail and pictures and frames therefor to customers and prospective customers of respondent, Griffin, as herein alleged, has and has had the purpose and capacity and tendency to mislead customers and prospective customers to erroneously believe and they have been led to believe that they were and are contracting and dealing with an established, operating, responsible studio, and that the pictures sold by respondent, Griffin, are high-grade hand-painted portraits, and that the frames therefor are of exceptional value, when such were not the facts, and to cause the public to purchase respondent Griffin's pictures and frames in substantial numbers because of such belief so engendered.

The use by respondents of the acts, practices, and methods aforesaid in connection with the offering for sale and selling of enlargements and frames in said commerce has the tendency and capacity to and does mislead and deceive members of the purchasing public into the erroneous and mistaken belief that the aforesaid statements, representations, and claims are true, and that said products are of the value and quality indicated. As a result of said erroneous and mistaken belief, a substantial number of the public have purchased said products in said commerce, thereby unfairly diverting trade in said commerce to the respondents from their competitors to the injury of said competitors and the public.

PAR. 8. The aforesaid acts and practices of respondents 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 February 26, 1944, issued and subsequently served its complaint in this proceeding upon the respondents, J. Claud Griffin, individually, and trading as Commercial Art Company, and Daniel G. Ries, individually, and trading as Progressive Portrait Company, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing by respondent, J. Claud Griffin, of his answer to the complaint (no answer being filed by respondent, Daniel G. Ries), testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the com-

plaint, answer of respondent, Griffin, testimony and other evidence, report of the trial examiner upon the evidence and the exceptions filed by respondent, Griffin, to such report, and brief in support of the complaint (no briefs having been filed by the respondents and oral argument not having been requested); 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, J. Claud Griffin, is an individual, trading as Commercial Art Company, his present business and post office address being 720 East Diamond Street, Pittsburgh, Pa. He is now, and for a number of years last past has been, engaged in the sale and distribution of colored or tinted enlargements of photographs and of frames for such enlargements.

Respondent, Daniel G. Ries, is an individual, trading as Progressive Portrait Company, with his place of business located at 929 Fifth Avenue, Pittsburgh, Pa. Respondent, Ries, is engaged in the making of colored or tinted enlargements of photographs and in the sale of such enlargements.

PAR. 2. In the course and conduct of his business, respondent, J. Claud Griffin, has caused his products, when sold, to be transported from the State of Pennsylvania and from other States of the United States to purchasers located in various States other than those in which such shipments originated. Respondent Griffin has maintained a course of trade in his products in commerce among and between various States of the United States.

PAR. 3. Respondent, Griffin, sells his products directly to the public through sales agents who make house-to-house calls on prospective purchasers. The agents are supplied by Griffin with order blanks and small photographs or miniatures purporting to be samples of the work done by Griffin. These miniatures represent a high degree of photographic and artistic skill and are very attractive in appearance. After directing the prospective purchaser's attention to the samples, the agent then endeavors to induce the prospect to produce one or more photographs for examination. The photographs produced by the prospect are usually those of members of his family and are highly treasured for sentimental reasons. Upon examining the photographs the agent states that they would make excellent enlargements and assures the prospect that any enlargement ordered would be similar in quality, finish, color, etc., to the miniatures carried by the agent as samples. The agent frequently refers to the proposed enlargement as a "painting" or a "hand painted portrait," stating that the enlargement will be hand painted by artists. A further representation sometimes made is that the price quoted for the enlargement (usually \$2.98) represents a special or introductory offer; that is, a price lower than that at which the enlargements are usually sold. If the agent succeeds in making a sale, he obtains the purchaser's signature to a contract or order form and departs, taking with him the photograph which is to be enlarged. In some instances he collects from the purchaser a part of the purchase price of \$2.98, but this is not required.

A few weeks after the order is obtained a second representative of respondent, Griffin, calls on the purchaser. This representative is known

in the trade as a "proof passer." He exhibits to the purchaser what purports to be a proof in black and white of the proposed enlargement and states that his call is for the purpose of obtaining the necessary color specifications for the finished picture, that is, the color of the subject's hair, eyes, etc. The agent sometimes represents himself to the purchaser as an "artist." After obtaining the color specifications and collecting the agreed purchase price of \$2.98 or such balance thereof as may be due, the proof passer then brings up the subject of a frame for the picture. This is usually the first time the matter of a frame has been mentioned throughout the entire transaction, the subject having been avoided by the first representative, and having also been avoided by the proof passer until after the color specifications have been obtained and the \$2.98 collected.

As a matter of fact, the frame for the picture represents, from Griffin's viewpoint, the vital part of the transaction. The sale of the frame is the end toward which the entire sales scheme is directed. Little or no profit is made by Griffin through the sale of the picture itself, as the expense of making the sale and supplying the picture consumes practically all of the purchase price. On the other hand, the margin of profit on the frames is extremely high, the frames being obtained by Griffin very cheaply and resold to the public at prices ranging from \$5.00 to \$22.00.

If a customer expresses himself as being unwilling to purchase a frame, his attention is directed by the proof passer to the fact that the picture will be finished in an irregular octagonal shape and highly convexed, and that it will therefore be very difficult or impossible for the customer to obtain elsewhere a frame which will fit the picture. By these means a customer is frequently compelled or induced to purchase a frame despite his inclination not to do so. In actual practice respondent, Griffin, takes little or no further interest in the supplying of the picture if the customer refuses to purchase a frame. Unreasonably long delays are frequently encountered by the customer in obtaining the picture and in obtaining the return of the original photograph.

PAR. 4. The representations made by respondent Griffin with respect to his enlargements are false and deceptive. The enlargements are in no way comparable to the miniatures carried by Griffin's agents and exhibited to the public as samples of Griffin's work. The enlargements are in fact of very inferior quality and frequently worthless. They are in no sense paintings or hand painted portraits but are merely cheap photographic enlargements on which little or no hand work is done. The coloring applied to the pictures is sprayed on through the use of a mechanical device known as an air brush which is operated by means of compressed air. The price quoted for the enlargements does not represent in any sense a special or introductory offer but is in fact the price at which the enlargements are regularly offered for sale. The entire sales scheme is deceptive and fraudulent in that, although the scheme has for its ultimate object the sale of a picture frame, such fact is concealed and withheld from the prospective purchaser until after the order for the enlargement has been obtained and the purchase price collected. Also concealed and withheld from the prospective purchaser is the fact that the enlargement will be of an irregular shape, and that it will be difficult or impossible for the purchaser of an enlargement to obtain elsewhere a frame which will fit the picture.

PAR. 5. A further practice on the part of respondent Griffin has been the use of various addresses purporting to represent locations at which he

maintained places of business, but which were in fact merely the addresses of persons or firms engaged in the making of photographic enlargements and frames and from whom Griffin obtained the products which he sold to the public. These addresses appeared on Griffin's contract or order forms along with his trade name, Commercial Art Company, or the name American Arts, which was formerly used by him. One of such addresses was that of respondent Daniel G. Ries at 929 Fifth Avenue, Pittsburgh, Pa. At various times other addresses in Pittsburgh were used by Griffin, as well as addresses in Syracuse, N. Y., and Cleveland, Ohio. These fictitious addresses had the tendency and capacity to mislead the public with respect to Griffin's identity and business status, in that they constituted representations that Griffin maintained a place of business at the address specified. Actually, Griffin had no established place of business at the address given or elsewhere. He did not make any of the photographic enlargements or frames sold by him but was engaged solely in the sale of products obtained from other parties, usually the business concerns located at the addresses used by him. Such concerns permitted the use of their addresses by Griffin as an inducement to him to purchase their products.

PAR. 6. Pursuant to agreement with respondent, Griffin, respondent, Daniel G. Ries, has permitted the use by Griffin of the address at which his photograph enlarging business is located, and has thus aided and cooperated with respondent Griffin in carrying on the practice described in paragraph 5 hereof.

PAR. 7. The acts and practices of the respondents, as herein set forth, have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the character, quality, and value of the products sold by respondent, Griffin, and with respect to the identity and business status of respondent, Griffin, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of such products as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

The acts and practices of the respondents, as herein found, are all to the prejudice 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, the answer of respondent, J. Claud Griffin, (no answer having been filed by respondent, Daniel G. Ries), testimony and other evidence taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and the exceptions to such report, and brief in support of the complaint (no brief having been filed by the respondents, and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, J. Claud Griffin, individually, and trading as Commercial Art Company, or trading under any other name, and his

agents, representatives, 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 respondent's photographic enlargements or reductions and of frames therefor, do forthwith cease and desist from:

1. Representing, directly or by implication, that respondent's photographic enlargements or reductions are paintings or are hand painted.

2. Exhibiting to prospective customers as samples any photographs or pictures which are not in fact representative of the pictures sold by respondent.

3. Representing, directly or by implication, that a picture to be made and delivered will be equal in quality and appearance to any sample displayed to the customer, unless the picture thereafter delivered is in fact of the same quality, design, and workmanship as such sample.

4. Representing, directly or by implication, that the price at which any of respondent's products is offered for sale represents a special or introductory offer or a reduced price, when such price is in fact the customary price at which such product is regularly sold.

5. Concealing from or failing to disclose to customers at the time pictures are ordered that the finished picture will be so shaped and designed that it can be used only in an odd-style frame which 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 respondent.

6. Using addresses purporting to represent the location at which respondent maintains his business, unless respondent does in fact maintain a place of business at the address specified; or otherwise misrepresenting respondent's identity or business status.

It is further ordered, That respondent, Daniel G. Ries, individually, and trading as Progressive Portrait Company, or trading under any other name, and his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution by respondent, J. Claud Griffin, in commerce, as "commerce" is defined in the Federal Trade Commission Act, of photographic enlargements or reductions and of frames therefor, do forthwith cease and desist from:

Representing or cooperating in the representation that his business address is that of respondent, J. Claud Griffin, unless respondent, Griffin, does in fact maintain a place of business at said address; or otherwise cooperating with respondent, Griffin, in misrepresenting his identity or business status.

It is further ordered, That the respondent 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.

IN THE MATTER OF
COAST FISHING COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSEC. (c) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 5197. Complaint, July 27, 1944—Decision, Mar. 26, 1945

Where a corporation engaged in the packing and interstate sale and distribution of canned tuna, sardines, mackerel and other sea food products to buyers including those who—designating themselves as “brokers,” “merchandise brokers” or “speculative brokers”—customarily placed orders only with those sellers who would grant and pay them commissions or brokerage fees on their own purchases, some of whom distributed them under their own private brands, and who, masking their buying operations under the aforesaid fictional designations to collect commissions or brokerage fees from said corporation and other sellers, invoiced and sold in their own names for their own accounts at their own prices and on their own terms, and assumed full and complete credit risks—

Paid and granted commissions or brokerage fees to buyers of its sea food products on their own purchases, as above illustrated:

Held, That such payments were in violation of subsec. (c) of sec. 2 of the Clayton Act as amended.

Mr. Edward S. Ragsdale for the Commission.

Mitchell, Silberberg & Knupp, of Los Angeles, Calif., for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described, since June 19, 1936, has violated and is now violating the provisions of subsection (c) of section 2 of the Clayton Act (U.S.C. Title 15, Sec. 13) as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Coast Fishing Company, is a corporation, organized and existing under the laws of the State of California, with its principal office and place of business located at 621 S. Fries Avenue, Wilmington, Calif.

PAR. 2. Respondent, Coast Fishing Company, is now engaged and for many years prior hereto, has engaged in the business of packing, distributing, and selling canned tuna, canned sardines and canned mackerel and other sea food products (all of which are hereinafter called sea food products) in its own name and for its own account for resale directly to buyers located in States other than the State in which the respondent is established. As a result of respondent's instructions, such sea food products are shipped and transported across State lines to such buyers who are located in various States of the United States, other than the State where the respondent is established.

The respondent, to distinguish its sea food products from the sea food products sold by competitors, and to facilitate sales, utilizes registered and