

Syllabus

IN THE MATTER OF

E. H. ROBERTS PORTRAIT CO. 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 4692. Complaint, Feb. 2, 1942—Decision, June 2, 1947

A "painting" is understood by artists who paint pictures, photographers who color photographs, and the general public, as an original representation by the painter of a design, image, or object on a surface by means of paint, either pastel, water color, or oil; a free-hand 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.

Where some ten individuals, who, as retail operators, were associated with and representatives of a corporation which was engaged at its place of business in Kansas City, Mo., in making colored enlargements or miniatures of photographs and snapshots, maintaining stocks of frames therefor, and selling such products to its retail operators;

In carrying on the sale of said products—in which the major portion of the profit was realized from the sale of frames—either direct to the purchasing public or through sales agents, in conjunction with said corporation and under a well coordinated plan or procedure in which all participated and cooperated, in competition with others likewise engaged—

(a) Made use of various trade names which included such terms as "art studios," "art institute," "art association," and other fictitious names such as World Distributing Co., Home Exhibit Club, and York Advertising Co., and displayed on their order blanks, stationery, and other materials, the business address of said corporation;

When in fact neither said retail operators nor said corporation owned, operated or controlled an art studio and did not constitute an art association; said corporation maintained and operated merely a commercial establishment; and said operators maintained no place of business at said address but merely used the same as their mailing address where correspondence was received and either forwarded, answered, or otherwise disposed of by employees of said corporation; and maintained, in fact, no place of business other than such mailing address;

With the result that customers dealing with such representatives or retail operators were caused to believe that they owned or operated or were connected with art studios, institutes of art, or places of business where colored enlargements or miniatures of photographs or snapshots were made; and

Where said corporation, which maintained close cooperation with and supervision over, the sales activities and business practices of its said operators and their agents, advised with the various operators with reference to the selection of trade names, the use of its address, the drafting of sales contract forms, and the use of sales talks; supplied them with contracts, receipts, notes, and other printed matter; maintained active open accounts with those satisfactory to it in said respect; and handled all mail addressed

to such operators under their various trade names, at its address, and, where required, prepared replies under the trade name of the particular operator; crediting to the respective accounts all C. O. D. receipts and other payments thus received—

- (b) Authorized, permitted, and cooperated, as hereinabove indicated, in the aforesaid misrepresentations by their retail operators of their financial responsibility, prestige or standing, and the place, character and extent of their business; and

Where the salesmen or sales agents who were employed by said retail operators and who contacted members of the purchasing public in connection with the sale and distribution of the products of said corporation, and, in said connection, exhibited to the customers attractive specimens of the purported type of work to be done in the form of samples of various enlargements and miniatures—

- (c) Referred thereto in the course of their sales talks as “paintings,” “portrait paintings,” “oil paintings,” or “paintings finished by hand,” and, in many instances, informed the purchaser that such enlargements or miniatures were being sold at a special or reduced price, as an advertising offer, or as an introductory offer;

The facts being that said products were not paintings, but were merely inexpensive photographic reproductions which were colored and reproduced in large quantities; snapshots and photographs were accepted which were fundamentally incapable of producing good enlargements or miniatures, and the final product was in many instances inferior to the samples submitted; and products were not offered at a special or reduced price, but at the usual one charged therefor; and,

Where said various retail operators and their sales agents—

- (d) Represented to customers and to prospective customers, in connection with pretended special offers, that a drawing contest would be held in a certain community to decide who should be one of the lucky few to have a painting placed on exhibition in connection with the special advertising or special introductory offer, and that the purchaser who drew the so-called “lucky coupon” or “lucky certificate” would be entitled to receive a hand-painted, oil portrait of any snapshot or photograph on a background of durable material at a special or reduced price, as compared with the regular prices therefor, which they represented as ranging from \$15 to \$30;

The facts being that the envelopes used in said connection were so manipulated that an acceptable customer invariably drew a lucky coupon; he did not, as he was led as aforesaid to believe, gain any advantage in price over any other purchaser through the receipt or drawing of such so-called lucky coupon or lucky certificates; all purchasers could purchase such paintings and portraits at the said so-called special introductory advertising offer; and the said procedure, or draw, as known to the trade, was merely a scheme employed to facilitate entry into the home of prospective customers; and,

- (e) Concealed from purchasers, in connection with their display of samples and at the time of the ordering of the colored enlargement, the fact that the finished product would be octagonal in shape and would be delivered in a frame of peculiar octagonal convex form and shape, and that it would ordinarily be impossible for the customer thereafter to obtain a frame to fit said picture except from salesmen concerned and at prices fixed by them;

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- (f) In some instances represented as the regular prices or values of frames, prices and values which were in fact substantially in excess of the prices at which similar frames were customarily sold; and
- (g) Refused, in some instances, in the event of the customer's final refusal to purchase a frame, to treat the purchase of the colored enlargement as a separate, independent transaction concluded upon full payment for the enlargement, and refused to finish and deliver the picture because the customer would not buy a frame therefor; and
- (h) Continued to hold the completed picture and the original photograph or snapshot from which it had been made, pending still further effort to effect sale of a frame;

With tendency and capacity to mislead and deceive the purchasing public concerning the nature and value of their products and the nature of the business conducted by them, and with effect of causing a substantial number of said public to purchase products in question in the erroneous belief that they were securing high-grade, quality portraits, paintings, oil paintings, or miniatures, and picture frames of exceptional value:

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

Mr. Marshall Morgan and *Mr. Morton Nesmith* for the Commission.
Nash & Donnelly, of Washington, D. C., for E. H. Roberts Portrait Co., Edward H. Roberts, Harold S. Roberts, Howard V. Roberts, Wayne Davidson, Frank J. Holihan, Chas. A. Huff, A. W. Merriner, Howard Stebbins, H. R. Burch, and Ira Lowe.

Mr. William L. Chenault, of Russellville, Ala., for J. O. Philpot.

Mr. G. W. Speer, of Gaffney, S. C., for James Spearman.

Mr. W. A. Leland McKeithen, of Pinehurst, N. C., for J. L. Gilmore.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it, the Federal Trade Commission having reason to believe that the 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, E. H. Roberts Portrait Co., hereinafter called corporate respondent, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business at 1000 Holmes Street, Kansas City, Mo.

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Respondents, Edward H. Roberts, Harold S. Roberts, and Howard V. Roberts, are individuals and president, vice president and secretary, and treasurer, respectively, of corporate respondent, E. H. Roberts Portrait Co., having their principal offices and place of business at 1000 Holmes Street, Kansas City, Mo. These respondents are the principal stockholders in, and direct and control the business policies and activities of, said E. H. Roberts Portrait Co. in carrying out the acts and practices hereinafter alleged.

Respondent, P. W. Berry, is an individual, trading as National Art Association, with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., and as such is associated with and is a representative of corporate respondent, E. H. Roberts Portrait Co. Respondent, Berry, also uses the address of 2801 South Third Street, Salt Lake City, Utah.

Respondent, E. P. Bingham, is an individual, trading as Metropolitan Studios and also trading as Metropolitan Portrait Studios, with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., and as such is associated with and is a representative of corporate respondent, E. H. Roberts Portrait Co. Respondent, Bingham, also uses the address of General Delivery, Macomb, Ill.

Respondent, J. E. Bowers, is an individual, trading as Interstate Studios, with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., and as such is associated with and is a representative of corporate respondent, E. H. Roberts Portrait Co. Respondent Bowers also uses the address of Box 1013, Spokane, Wash.

Respondent, W. C. Bush, is an individual, trading as Esquire Studios, with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., and as such is associated with and is a representative of corporate respondent, E. H. Roberts Portrait Co. Respondent Bush also uses the address of Hotel Fleetwood, Charleston, W. Va.

Respondent, Chris Christensen, is an individual, trading as Van Dyke Studios, with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., and as such is associated with and is a representative of corporate respondent, E. H. Roberts Portrait Co. Respondent, Christensen, also uses the address of General Delivery, Oneida, Tenn.

Respondent, W. O. Coen, is an individual, trading as United Art Studio, with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., and as such is associated with and is a representative of corporate respondent, E. H. Roberts Portrait Co. Re-

spondent, Coen, also uses the address of 802 South Limestone, Springfield, Ohio.

Respondent, George N. Conrad, is an individual, trading as Central Studios, with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., and as such is associated with and is a representative of corporate respondent, E. H. Roberts Portrait Co. Respondent, Conrad, also uses the address of care of International Art Co., 325 West Huron, Chicago, Ill.

Respondent, Wayne Davidson, is an individual, trading as Apex Studios, with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., and as such is associated with and is a representative of corporate respondent, E. H. Roberts Portrait Co. Respondent, Davidson, also uses the address of Passaic, Mo.

Respondent, DeForest Edwards, is an individual, trading as Superior Art Association, with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., and as such is associated with and is a representative of corporate respondent, E. H. Roberts Portrait Co. Respondent Edwards also uses the address of 1437 South Emporia, Wichita, Kans.

Respondent, Alphonse D. Firebaugh, is an individual, trading as World Distributing Co., with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., and as such is associated with and is a representative of corporate respondent, E. H. Roberts Portrait Co. Respondent, Firebaugh, also uses the address of care of Virgil S. Firebaugh, 612 Loew's State Building, Los Angeles, Calif.

Respondent, Virgil S. Firebaugh, is an individual, trading as Universal Art Studios, with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., and as such is associated with and is a representative of corporate respondent, E. H. Roberts Portrait Co. Respondent, Firebaugh, also uses the address of Loew's State Building, Los Angeles, Calif.

Respondent, George Gulberg, is an individual, trading as United Artists Association, with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., and as such is associated with and is a representative of corporate respondent, E. H. Roberts Portrait Co. Respondent, Gulberg, also uses the address of Box 57, Whittier, Calif.

Respondent, Robert Hames, is an individual, trading as United Artist Studio, with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., and as such is associated with and is a representative of corporate respondent, E. H. Roberts Portrait

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Co. Respondent, Hames, also uses the address of General Delivery, Albuquerque, N. Mex.

Respondent, Floyd Hammer, is an individual, trading as Mid-Continent Distributing Co., with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., and as such is associated with and is a representative of corporate respondent, E. H. Roberts Portrait Co.

Respondent, George R. Harris, is an individual, trading as Windsor Studios, with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., and as such is associated with and is a representative of corporate respondent, E. H. Roberts Portrait Co. Respondent, Harris, also uses the address of General Delivery, Malvern, Ark.

Respondent, Glen Harrison, is an individual, trading as Union Distributing Co., with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., and as such is associated with and is a representative of corporate respondent, E. H. Roberts Portrait Co. Respondent, Harrison, also uses the address General Delivery, Baton Rouge, La.

Respondent, Frank J. Holihan, is an individual, trading as Vanderbilt Arts Association, with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., and as such is associated with and is a representative of corporate respondent, E. H. Roberts Portrait Co. Respondent, Holihan, also uses the address General Delivery, Hollywood, Calif.

Respondent, Chas. A. Huff, is an individual, trading as Southern Portrait Studios, with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., and as such is associated with and is a representative of corporate respondent, E. H. Roberts Portrait Co. Respondent, Huff, also uses the address Box 163, Henderson, Tex.

Respondent, Mrs. Jack M. Jelly, is an individual, trading as Western Academy of Art, with her office and principal place of business at 1000 Holmes Street, Kansas City, Mo., and as such is associated with and is a representative of corporate respondent, E. H. Roberts Portrait Co. Respondent, Jelly, also uses the address General Delivery, Hot Springs, Ark.

Respondent, Jack H. Kane, is an individual trading as Memorial Studios, and also trading as Metropolitan Studios, and also trading as Metropolitan Portrait Studios, with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., and as such is associated with and is a representative of corporate respondent, E. H.

Roberts Portrait Co. Respondent Kane also uses the address Box 902, Marysville, Calif.

Respondent, Loyce E. Kennedy, is an individual trading as Western States Portrait Co., and also trading as Western Portrait Co., with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., and as such is associated with and is a representative of corporate respondent, E. H. Roberts Portrait Co. Respondent, Kennedy, also uses the address Route 3 on South Twelfth Street, Ponca City, Okla.

Respondent, Harry E. Kent, is an individual trading as Beaux Art Studios, and also trading as Eldred Distributing & Sales Co., with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., and as such is associated with and is a representative of corporate respondent, E. H. Roberts Portrait Co. Respondent, Kent, also uses the address 1017 South State Street, Salt Lake City, Utah.

Respondent, W. Kiker, is an individual trading as United Art Studios, and also trading as Western States Portrait Co., with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., and as such is associated with and is a representative of corporate respondent, E. H. Roberts Portrait Co. Respondent, Kiker, also uses the address 225 South Eleventh Street, Clinton, Okla.

Respondent, Theodore Leff, is an individual trading as American Portrait Co., and also trading as United Artists Association, with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., and as such is associated with and is a representative of corporate respondent, E. H. Roberts Portrait Co. Respondent, Leff, also uses the address care of Mrs. B. Feigenbaum, 2500 Panorama Terrace, Los Angeles, Calif.

Respondent, Edward F. Lingo, is an individual trading as Linwill Portrait Co. and formerly trading as United Artists Association, with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., and as such is associated with and is a representative of corporate respondent, E. H. Roberts Portrait Co. Respondent, Lingo, also uses the address 330 West McDowell Road, Phoenix, Ariz.

Respondent, M. J. McConahay, is an individual trading as National Art Co., with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., and as such is associated with and is a representative of corporate respondent, E. H. Roberts Portrait Co.

Respondent, R. H. Mercer, is an individual trading as Sunset Art Studios, with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., and as such is associated with and is a representative of corporate respondent, E. H. Roberts Portrait Co.

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Respondent, A. W. Merriner, is an individual trading as American Portrait Association, with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., and as such is associated with and is a representative of corporate respondent, E. H. Roberts Portrait Co. Respondent, Merriner, also uses the address 415 West Broadway, Centralia, Illinois.

Respondent, Erbie J. Moak, is an individual trading as Acme Art Association, with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., and as such is associated with and is a representative of corporate respondent, E. H. Roberts Portrait Co. Respondent, Moak, also uses the address 510 Twenty-third Street, Sacramento, Calif.

Respondent, F. C. Mowery, is an individual trading as Paramount Service Co., Texas, with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., and as such is associated with and is a representative of corporate respondent, E. H. Roberts Portrait Co. Respondent, Mowery, also uses the address General Delivery, Price, Utah.

Respondent, F. N. Nelson, is an individual trading as Eastern Portrait Co., with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., and as such is associated with and is a representative of corporate respondent, E. H. Roberts Portrait Co.

Respondent, J. P. Nelson, is an individual trading as Tiffany Service Co., with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., and as such is associated with and is a representative of corporate respondent, E. H. Roberts Portrait Co. Respondent, Nelson, also uses the address Box 3, Inglewood, Calif.

Respondent, R. Oates, is an individual trading as Continental Art Studios, with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., and as such is associated with and is a representative of corporate respondent, E. H. Roberts Portrait Co. Respondent, Oates, also uses the address 7400 Brookpart Avenue, Cleveland, Ohio.

Respondent, C. J. O'Keefe, is an individual, trading as Venetian Art Distributors, with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., and as such is associated with and is a representative of corporate respondent, E. H. Roberts Portrait Co. Respondent, O'Keefe, also uses the address of General Delivery, Meridian, Miss.

Respondent, Paul E. O'Neill, is an individual, trading as Square Deal Portrait Co., with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., and as such is associated with

and is a representative of corporate respondent, E. H. Roberts Portrait Co. Respondent, O'Neill, also uses the address 1925 Eighth Avenue, Birmingham, Ala.

Respondent, J. O. Philpot, is an individual, trading as Acme Art Co., with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., and as such is associated with and is a representative of corporate respondent, E. H. Roberts, Portrait Co. Respondent, Philpot, also uses the address Mount Hope, Ala.

Respondent, Ray T. Rice, is an individual, trading as Empire Art Service, with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., and as such is associated with and is a representative of corporate respondent, E. H. Roberts Portrait Co. Respondent, Rice, also uses the address 378 Golden Gate Avenue, San Francisco, Calif.

Respondent, R. T. Sherrod, is an individual, trading as Home Exhibit Club, with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., and as such is associated with and is a representative of corporate respondent, E. H. Roberts Portrait Co. Respondent, R. T. Sherrod, also uses the address care of Mr. J. T. Sherrod, Pavo, Ga.

Respondent, C. A. Shields, is an individual, trading as Miniature Arts Co., with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., and as such is associated with and is a representative of corporate respondent, E. H. Roberts Portrait Company. Respondent Shields also uses the address care of Chicago Portrait Co., 509 South Wabash Avenue, Chicago, Ill.

Respondent, C. Q. Simmans, is an individual, trading as Royal Art Studios and also trading as Royal Studios, with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., and as such is associated with and is a representative of corporate respondent, E. H. Roberts Portrait Co. Respondent, Simmans, also uses the address General Delivery, Oak Park, Ga.

Respondent, James Spearman, is an individual, trading as Universal Distributing Co., with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., and as such is associated with and is a representative of corporate respondent, E. H. Roberts Portrait Co. Respondent, Spearman, also uses the address Route 4, Gaffney, S. C.

Respondent, Howard Stebbins, is an individual, trading as Stebbins Advertising Co., and also trading as York Advertising Co., with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., and as such is associated with and is a representa-

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tive of corporate respondent, E. H. Roberts Portrait Co. Respondent, Stebbins, also uses the address 1284 North Parkway, Memphis, Tenn.

Respondent, Harold K. Stice, is an individual, trading as Stice Advertising Co., with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., and as such is associated with and is a representative of corporate respondent, E. H. Roberts Portrait Co. Respondent, Stice also uses the address care of International Art Co., 325 West Huron Street, Chicago, Ill.

Respondents, O. L. Talbott and R. R. Green, are individuals, trading as National Portrait Co., with their office and principal place of business at 1000 Holmes Street, Kansas City, Mo., and as such are associated with and are representatives of corporate respondent, E. H. Roberts Portrait Co. Respondent, Talbott, also uses the address Paintsville, Ky., and respondent, Green, also uses the address of Hampton, Tenn.

Respondent, Ed Thedell, is an individual, trading as the Art Studios, with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., and as such is associated with and is a representative of corporate respondent, E. H. Roberts Portrait Co. Respondent, Thedell, also uses the address 512 West Twenty-fourth Street, Ogden, Utah.

Respondent, Arthur W. Thomson, is an individual trading as National Academy of Art, with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., and as such is associated with and is a representative of corporate respondent, E. H. Roberts Portrait Co. Respondent, Thomson, also uses the address 954 Princess Street, Regina, Saskatchewan, Canada.

Respondent, Orville J. Weeks, is an individual, trading as Central Advertising Co., with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., and as such is associated with and is a representative of corporate respondent, E. H. Roberts Portrait Co. Respondent, Weeks, also uses the address care of H. Stebbins, 1284 North Parkway, Memphis, Tenn.

Respondent, Oscar White, is an individual, trading as Twentieth Century Art Association, with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., and as such is associated with and is a representative of corporate respondent, E. H. Roberts Portrait Co. Respondent, White, also uses the address care of H. Stebbins, 1284 North Parkway, Memphis, Tenn.

Respondent, George Wiesner, is an individual, trading as Peerless Portrait Co., with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., and as such is associated with and

is a representative of corporate respondent, E. H. Roberts Portrait Co. Respondent, Wiesner, also uses the address General Delivery, Hazard, Ky.

Respondent, L. L. Wittenburg, is an individual, trading as United Art Association, with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., and as such is associated with and is a representative of corporate respondent, E. H. Roberts Portrait Co. Respondent, Wittenberg, also uses the address 1024 University, San Diego, Calif.

The above named respondents, P. W. Berry, E. P. Bingham, J. E. Bowers, W. C. Bush, Chris Christensen, W. O. Coen, George N. Conrad, Wayne Davidson, DeForest Edwards, Alphonso D. Firebaugh, Virgil S. Firebaugh, George Gulberg, Robert Hames, Floyd Hammer, George R. Harris, Glen Harrison, Frank J. Holihan, Chas. A. Huff, Mrs. Jack M. Jelly, Jack H. Kane, Loyce E. Kennedy, Harry E. Kent, W. Kiker, Theodore Leff, Edward F. Lingo, M. J. McConahay, R. H. Mercer, A. W. Merriner, Erbie J. Moak, F. C. Mowery, F. N. Nelson, J. P. Nelson, R. Oates, C. J. O'Keefe, Paul E. O'Neill, J. O. Philpot, Ray T. Rice, R. T. Sherrod, C. A. Shields, C. Q. Simmans, James Spearman, Howard Stebbins, Harold K. Stice, O. L. Talbott, R. R. Green, Ed Thedell, Arthur W. Thomson, Orville J. Weeks, Oscar White, George Wiesner, and L. L. Wittenberg, are hereinafter on occasion referred to as respondent representatives.

Respondents, Ned Adamson, Houston Agee, L. C. Allgeier, W. L. Andersen, Herbert Atkins, James L. Bardin, Bud Bates, E. A. Benedict, A. W. Betts, Jack Bingham, Louella Brooks, H. R. Burch, C. E. Cantrell, Harry Caton, Rita Cauffiel, Susie Clark, Max Cohn, Edith Colburn, N. J. Conahy, R. Cooke, Betty Coratolo, Ensil Cross, Jack Dalton, M. Davis, A. K. DeVare, T. W. DeVore, Emil J. Dittmer, Patrick J. Durkin, Williard Dzink, Lee Eastman, F. M. Eaton, C. Eberhart, Dr. Echert, John Enyeart, Glada Evans, Pat Evans, Yeada Evans, O. S. Ford, J. Fraser, Homer Frease, Merlin Froland, H. C. Gilmore, J. L. Gilmore, O. M. Gilmore, Roy Z. Goodwin, Carl Grace, Clarence Gray, Art Greene, Jacob M. Gross, G. R. Haing, W. A. Haire, Cora Hall, Melvin E. Hamilton, J. G. Hane, M. E. Hansen, James Hardy, A. R. Harris, J. E. Hartley, A. K. Hayden, George R. Hayne, J. G. Hayne, K. E. Heard, M. E. Hedge, W. J. Heimer, C. E. Hewell, Hobart Hodler, W. Holcomb, V. I. Holcomb, L. H. Holt, L. J. Holt, C. A. Hough, L. Howard, W. O. Huff, R. B. Jarke, Jack M. Jelly, Edwin Jones, R. F. Jones, Ethel Judd, May Justice, Lucille Kamp, A. Kane, Herb Kellar, H. L. Kennedy, L. N. Kennedy, Ray Kent, Roy Kent, Helen J. Kuhns, Milan Kukor, Don Kyees, Lloyd Kyees, C. J.

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LeCompte, Elden P. LeCompte, Floyd Lingo, D. A. Lions, Lola Lions, Richard R. Lions, Ted A. Lions, Wayne W. Lions, W. B. Lovings, Ira Lowe, Mary Lowe, Ester Lowery, J. N. McFarland, J. Mantell, G. J. Manuel, L. F. Marsden, L. F. Marselen, Red Melvin, J. L. Moak, Paul Mogelvang, James R. Monroe, Bill Moore, K. C. Murphy, G. W. Myers, K. F. Myers, Mrs. Leslie Nelson, Teddy Orcutt, Tom Parker, B. E. Patton, A. J. Paulson, Ann K. Pearce, Ruth Pearce, Cecil Phillips, L. F. Poe, Mrs. L. F. Poe, Fred Purselley, Ider Rekkedal, Dell Reno, Allen Rensel, Dan Reppert, G. A. Rucker, Margaret Ruth, Melvin E. Sarsan, Vern Schultz, A. N. Sinnon, Don D. Smith, R. C. Speece, Gordon Stensrud, Milton Stensrud, Earl Stice, Howard Terry, Marjorie Hearn Terry, E. O. Tidlund, J. P. Townsend, C. E. Turner, William Vesey, Cecil Vance, Dona Vroman, Harry Vroman, Chase Wank, J. W. Ward, J. Warren, W. Wayne, Paul H. Webb, C. L. Williams, D. E. Williamson, Thomas Wills, W. F. Wisdom, Ruby Witt, Francis Woodbain, Francis D. Woodham, Mrs. Francis D. Woodham, Charles Worth, B. U. Youmans, and Rose Ann Young, are individuals and are sales agents and employees of one or more of the respondents, and hereinafter 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 1000 Holmes Street, Kansas City, Mo.

All the respondents are 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 their place of business in the State of Missouri to 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 been and are now engaged in direct and substantial competition with various corporations, partnerships, and individuals likewise engaged in the sale and distribution of 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, and likewise 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 5 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 corporate respondent is engaged in the business of producing and distributing colored or tinted enlargements and miniatures of photographs and the sale of frames therefor, and in the sale and distribution thereof the officers and directors of said corporate respondent, in their individual and respective official capacities, dominate, direct, and control the corporate policies, affairs, and activities of said corporate respondent and directly or indirectly exercise 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 corporate respondent are various operators, associates or representatives who, through the medium of various and sundry trade names, offer for sale, sell and distribute corporate respondent's products to the consuming public. Respondent representatives are such operators, associates or representatives of said corporate respondent.

The respondent representatives employ numerous persons in various capacities, such as crew managers, road managers, proof passers, delivery men, field artists, and salesmen or sales agents, who contact the purchasing public in the sale, distribution, and delivery of the products produced by the corporate respondent and sold and distributed by the corporate respondent and the respondent representatives. Respondent sales agents are connected with the respondent representatives in the above capacities in connection with the sale and distribution of said corporate respondent's products.

PAR. 5. Pursuant to said understandings, agreements, combinations, and conspiracies and in furtherance thereof, 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.

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(1) In buying respondents' products, purchasers and prospective purchasers are led to believe by respondent sales agents and respondent representatives that they are contracting or dealing with the duly constituted representative or sales agent of the corporate respondent. Respondent representatives and respondent sales agents are furnished with identification certificates and credentials signed by corporate respondent, E. H. Roberts Portrait Co., which are exhibited by them when interviewing various prospective customers.

Equipment, including catalogs, order blanks, daily report forms, receipts, and, in many instances, sample cases enclosing samples of corporate respondent's products, is furnished by corporate respondent to said respondent representatives and respondent sales agents. The corporate respondent, in many instances, causes orders or contracts for its products to be entered on printed forms provided by it for that purpose. These order blanks or contract forms, in some instances, contain corporate respondent's name and address as well as the name or trade name of the respondent representative through whom the order is secured. In such order blanks it is variously stated, either directly or by implication, that said respondent representative is affiliated with or is a subsidiary of corporate respondent. When an order is secured, said order blanks or contracts are signed by the respondent representative sales agent securing the order as representative, company representative, solicitor, or salesman on a line provided therefor.

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

(Form of advertising order blank or contract)

\$2.95—Special Advertising Offer—\$2.95

BEAUX ART STUDIO

Affiliated with E. H. Roberts Portrait Co., Kansas City, Mo.

By paying our representative \$2.95 for this Certificate, we will make for the undersigned one of our \$20.00 HIGH GRADE PAINTINGS in the most pleasing size in the NEWEST DESIGN, same as painting shown.

This extraordinary offer is for advertising purposes only to introduce paintings of a Higher grade, Hand finished by a talented artist; therefore to assure us of a lasting advertisement this offer is conditional to the extent that the painting be framed within a reasonable length of time.

Before finishing, our field artist will call on you with a sketch of your photograph and get full particulars for finishing; at that time art-craft mount-

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ings of the newest design will be submitted for your selection. In the event a mounting is not selected, the sketch will be left with you until you select a mounting elsewhere, then the painting will be finished at no additional cost. Countermands not accepted. Verbal agreements not recognized.

ALL PHOTOGRAPHS RETURNED
WITH FINISHED PAINTING.

ALL WORK STRICTLY
GUARANTEED.

THIS OFFER CANNOT BE EXTENDED
FUTURE PRICE \$20.00 AND UP.

(Form of certificate)

ARTS AND CRAFTS PORTRAIT STUDIO

Holmes at Tent, Kansas City, Mo.

To introduce Aristo portraiture.

This certificate entitles M----- to one Aristo portrait finished in colors, the dimensions of which are 10 x 16 inches. This offer is only conditional to the extent that a certificate holder purchase from us the frame for this portrait.

Our representative will visit you shortly to demonstrate the black and white outline which is used as a base for the portrait. He will also show a finished Aristo portrait and a very fine assortment of appropriate frames for your selection. A deposit of approximately one-half of the purchase will be required at that time, balance to be paid on delivery of frame and portrait.

Your original photograph will be carefully handled and returned to you promptly.

ARTS AND CRAFTS PORTRAIT STUDIO,

By -----

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 respondents' products and to give prestige to the various trade names used by respondent representatives and respondent sales agents. In truth and in fact, the respondent representatives and respondent sales agents are associated with and are representatives of corporate respondent, E. H. Roberts Portrait Co., as the public is so led to believe; however, when any difficulty arises between purchasers and respondent representatives and respondent sales agents or corporate respondent E. H. Roberts Portrait Company, said corporate respondent denies any liability for any claims and advises purchasers that none of respondent representatives or respondent sales agents are in any wise connected with corporate respondent.

The so-called paintings, hand-painted portraits, Mirratone portraits, Duotone reproductions, Aristo portraiture, or miniatures produced, sold, and distributed by respondents are not portraits, miniatures, or paintings finished or produced by hand in oil colors in any

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sense of the word, but, to the contrary, are merely cheap, quickly made 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 photographic reproduction in solution largely through the use of a mechanical airbrush and compressed air.

(2) Respondents exhibit to purchasers and prospective purchasers samples of attractively 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 an advertising price, reduced price, special introductory price, 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 at an advertising price, reduced 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 to the artist who is to paint the portrait and that said photograph will be returned to the purchaser with the completed work. In other instances, respondents represent that they maintain an art institute, art studio, artist studio, or academy of art, 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 respective purchaser that the so-called portrait or oil painting will be finished in oil paint by hand on a durable background, such as linen or silk.

In truth and in fact, corporate respondent, E. H. Roberts Portrait Co., is not and never has been an art association, art studio, art institute, academy of art, or similar institution, and such institutions are not now, and have not been during the times mentioned herein, owned or operated by any of the respondents herein. On the contrary, the busi-

ness conducted by 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," "artist studio," "art company," "art institute," "academy of art," 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 the respondents' business with various organizations similarly named and designated which conduct an art association, art studio, artist studio, art institute, or academy of art, 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 sterling silver or gold-plated, and that they contain unbreakable imported glass fronts which make the final product moisture proof and everlasting.

In truth and in fact, said frames are not sterling silver or gold-plated, but are made of wood colored with a silver-like or yellow-like substance, having the appearance of silver or gold as the case may be; the glass fronts used in said frames are not unbreakable, and are of domestic origin, and when encased in such glass front and frame the product is susceptible to damage by moisture.

(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 man 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. A picture is presented to the purchaser in a frame of unusual type 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. In the event the purchaser refuses to buy a frame, or refuses to accept the portrait because it is below the standards or representations made by the salesmen, or for any other reasons, the respondent in many instances refuses to deliver the completed picture, regardless of whether or not it has been paid for in full, or even to return the original photograph lent 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 lent or submitted by purchasers are to be retained by respondents until payment of any sum alleged by respondents to be due them. To the contrary, purchasers are advised by respondents that photographs lent to respondents will be returned by the respondents at the time the finished product is submitted regardless of whether or not such product or 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 thereof to obtain a frame to fit said portrait from any source except from or through respondents at prices fixed by respondent.

(6) The said respondents in other instances further represent to prospective customers that their company is putting on an advertising campaign to get the company established and to introduce it in the customer's community; respondents' method of advertising is to induce the customer to take a chance by drawing from a number of envelopes containing slips of paper, one or more of which contains the word "Special." Respondents further represent that the customer who is

fortunate enough to draw the slip of paper marked "Special" is to receive a hand painted oil portrait of any snapshot or photograph on a background of canvas or other durable material, for the sum of \$1.98. Respondents also represent that this enlargement is regularly sold at prices ranging from \$15 to \$20 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 made at different prices.) The said envelopes containing said slips are so manipulated by respondents that each prospective customer invariably draws a lucky slip or slip of paper marked "Special," of which the following is typical:

SPECIAL

This Entitles the Holder to Your Special Advertising Offer

VAN DYKE STUDIOS

Various other methods and practices 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 often vary with different sales.

Upon completion of the draw and deliverance of a snapshot or photograph and \$1.98, the customer is handed a receipt in which is recited a condition to this advertising offer that "the portraits be framed within a reasonable length of time." Typical of such receipt, is the following:

WESTERN STATES PORTRAIT CO.

1000 Holmes Street, Kansas City, Mo.

Date _____, 193_____.

By paying our representative _____, we will make for the undersigned _____ of our HIGH GRADE PORTRAITS in the most pleasing size in the NEWEST OCTAGON DESIGN, same as sample shown.

This extraordinary offer is for advertising purposes only to introduce portraits of a higher grade, hand finished by a talented artist; therefore to assure us of a lasting advertisement this offer is conditional to the extent that the portraits be framed within a reasonable length of time.

Before finishing, our field artist will call on you with a sketch of your photograph and get full particulars for finishing; at that time artwork frames of the newest design will be submitted for your selection. In the event a frame is not selected, the sketch will be left with you until a suitable frame is selected, elsewhere, then the portrait will be finished at no additional cost.

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Countermands not accepted. Verbal agreements not recognized.
This offer cannot be extended. All work strictly guaranteed.

Representative

Customer-----

Address-----

The holders of said special certificates or other so-called lucky slips 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 certificate or special certificate or lucky slip and all purchasers may purchase said paintings or portraits at the price used by respondents in making a so-called special introductory and advertising 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 the 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 field artist 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 or made payable directly to E. H. Roberts Portrait Co. Said note is transferred by respondent representative or sales agent to E. H. Roberts Portrait Co., which organization credits the amount of the sale to the account of the respondent under whose trade name or organization the sale is made. Among and typical of the various notes used by respondents, is the following:

DUPLICATE

----- \$-----
(Name of post office) 19____ R. F. D. No.____ (State)____ Street____
For value received, I promise to pay to the order of E. H. Roberts Portrait Co., at Kansas City, Mo., ----- Dollars with interest at the rate of 8% after due date as follows: \$----- on or before -----, 19____ and \$----- every ----- days thereafter until the whole sum is paid, and if any of the said installments are not so paid, the whole sum of both principal and interest to become immediately due and collectable, at the option of the holder of this note. And in case suit or action is instituted to collect this note, or any portion

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thereof, I promise to pay, in addition to the costs, such sum as the court may adjudge reasonable, for attorney's fees in said suit or action.

This note is given voluntarily for merchandise received in good condition, which I have accepted as satisfactory, and which cannot be returned in cancellation of this obligation.

Merchandise Purchased from _____

THERE IS NO DEFENSE NOR OFFSET TO THIS OBLIGATION

_____Customer.

(NOTE.—If customer's name is not legible print same in this space.)

Carrying charge \$_____.

Corporate respondent, E. H. Roberts Portrait Co., then endeavors to collect the note for said respondent representative or sales agent, charging a collection fee for doing so. 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 E. H. Roberts Portrait Co. 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 E. H. Roberts Portrait Co., the respondent representative or sales agent 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 E. H. Roberts Portrait Co. in connection with such transactions:

The E. H. Roberts Portrait Co. has today placed in my hands an account owing by you in the form of a note for \$_____ the balance of which is \$_____.

(Signed) HAROLD S. ROBERTS.

This is to advise you that your proposal to pay the entire balance of \$_____ not later than October 15 is agreeable to my client.

(Signed) HAROLD S. ROBERTS.

In connection with these and similar representations, E. H. Roberts Portrait Co. leads the purchaser to believe that the corporation has bought the note of the purchaser or customer and has paid its money therefor and looks to the customer for payment of the note.

In truth and in fact, E. H. Roberts Portrait Co. does not buy the notes in question by discount, or otherwise, and has not actually paid respondent representative or respondent sales agent any consideration therefor. 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 is thus led to believe that he is unable to deal with

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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 the corporate respondent's business plan as the same relates to the collection of money alleged to be due for pictures and frames, E. H. Roberts Portrait Co. and its respondent representatives and sales agents resort to various methods of frightening or intimidating people in the further payment of money due for pictures and frames. In this connection, E. H. Roberts Portrait Co. makes a practice of writing offensive letters to purchasers of pictures or frames. The following, among other statements, were and are being made in letters written by the E. H. Roberts Portrait Co. to purchasers of pictures from the respondents:

Unless you are prepared to prove that this is a forgery, we must insist on prompt payment of the obligation.

The merchandise was left with you on good faith on the strength of your business honesty and signature. We naturally expect the same good faith be shown on your part by paying for the work agreed.

Before any further action is taken in the matter, I am giving you an opportunity for settlement and trust you will avail yourself of this courtesy. * * *

We know that your credit is too important for you to sacrifice for this trivial sum, so we urge that you send your check or money order for the amount promptly.

Immediate action within the next six days will make it unnecessary for us to turn this matter over to our legal representatives for whatever action they deem fitting.

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 the respondents to mislead and deceive members of the purchasing public and to induce the purchase of their said products.

(8) Respondent representatives and sales agents further represent that the trade name company they work for is conducting contests in various communities, obtaining pictures supplied by the purchasers which are enlarged and painted in oil by the studios, the winning enlargements being hung in art galleries where commercial companies view them and purchase them for national advertising campaigns, paying therefor large sums for the privilege. Respondents represent that the charge of \$2 for the enlargement of the negative is actually

only one-half the cost of the enlargement, and after obtaining this price the respondent or sales agent then returns and represents that the householder's picture is one of the winners and the oil painting enlargement is to be hung in the galleries and advertising studios for three years; that the householder would be entitled to an exact duplicate oil portrait provided that he pays the cost of an identical frame. Respondent sales agents further represent that they would buy the rights from the householder to use the picture for advertising purposes.

In truth and in fact, there were no such advertising contests for advertising or any other purpose. The charge of \$2 for the negative for enlargement was not a special low price at one-half the cost, but in truth and in fact, was no different than the price offered other purchasers for the identical product. The representation that the householder was a winner was used solely for the purpose of facilitating the sale of a frame at an excessive price.

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 or 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 and with divers other persons whose names are to the Commission unknown 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 erroneous and mistaken 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, as hereinabove alleged, are all to the prejudice and injury of the public and of respondents' competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on February 2, 1942, issued its complaint in this proceeding, charging the respondents named in the caption hereof with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. This complaint was served upon the re-

spondents, E. H. Roberts Portrait Co., a corporation; Edward H. Roberts, Harold S. Roberts, and Howard V. Roberts, individually and as officers of E. H. Roberts Portrait Co.; Frank J. Holihan, individually and trading as Vanderbilt Arts Association; A. W. Merriner, individually and trading as American Portrait Association; Howard Stebbins, individually and trading as Stebbins Advertising Co. and as York Advertising Co.; Wayne Davidson, individually and trading as Apex Studios; Chas. A. Huff, individually and trading as Southern Portrait Studios; W. O. Coen, individually and trading as United Art Studio; Glen Harrison, individually and trading as Union Distributing Co.; J. O. Philpot, individually and trading as Acme Art Co.; George R. Harris, individually and trading as Windsor Studios; R. T. Sherrod, individually and trading as Home Exhibit Club; Alphonse D. Firebaugh, individually and trading as World Distributing Co.; James Spearman, individually and trading as Universal Distributing Co.; Paul E. O'Neill, individually and trading as Square Deal Portrait Co.; J. L. Gilmore; C. E. Hewell; Harry Caton; L. F. Poe; Paul Mogelvang; Homer Frease, Howard Terry; and R. F. Jones. The remaining respondents in this proceeding were not served with a copy of the complaint and did not appear or file answer herein. All of the respondents hereinabove named who were served with a copy of the complaint filed their answers admitting in part and denying in part the allegations of said complaint, except the respondents, Glen Harrison, J. L. Gilmore, R. T. Sherrod, Paul Mogelvang, Homer Frease, Alphonse D. Firebaugh, Howard Terry, and Paul E. O'Neill, who filed their separate answers admitting all the material allegations of fact set forth in the complaint and waiving all intervening procedure and further hearing as to said facts. Subsequent thereto, respondents, James Spearman and R. F. Jones, filed their separate motions with the Commission asking leave to withdraw their answers theretofore filed and to file in lieu thereof a substitute answer admitting all the material allegations of fact set forth in the complaint and waiving all intervening procedure and further hearing as to said facts, which motions were duly granted by the Commission.

Thereafter, the respondents, E. H. Roberts Portrait Co., a corporation; Edward H. Roberts, Harold S. Roberts, and Howard V. Roberts, individually and as officers of E. H. Roberts Portrait Co.; Frank J. Holihan, trading as Vanderbilt Arts Association; A. W. Merriner, trading as American Portrait Association; Howard Stebbins, trading as Stebbins Advertising Co. and as York Advertising Co.; Wayne Davidson, trading as Apex Studios; Chas. A. Huff, trading as Southern Portrait Studios; Ira Lowe; and H. R. Burch entered into a stipu-

lation, whereby it was stipulated and agreed that a statement of fact signed and executed by said respondents through their counsel and Daniel J. Murphy, assistant chief trial 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 respondents expressly waiving filing of report upon the evidence by trial examiner.

Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answers and substitute 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 the record herein 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, E. H. Roberts Portrait Co. (hereinafter called "corporate respondent"), is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business at 1000 Holmes Street, Kansas City, Mo.

Respondents, Edward H. Roberts and Harold S. Roberts, were president and vice president, respectively, of the corporate respondent, E. H. Roberts Portrait Co., and directed and controlled the policies, activities, and affairs of the corporate respondent, E. H. Roberts Portrait Co., in connection with the business conducted by it.

Respondent, Howard V. Roberts, is the wife of respondent Harold S. Roberts but, while a stockholder in corporate respondent, said Howard V. Roberts has not taken any active part in the management or conduct of the affairs of the corporate respondent nor in the formulation or execution of any of its policies, being merely a nominal officer of corporate respondent to comply with the corporate laws of the State of Missouri.

Respondent, Wayne Davidson, an individual trading as Apex Studios, with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., was associated with and was a representative

of corporate respondent, E. H. Roberts Portrait Co. Said respondent also used the address Passaic, Mo.

Respondent, Alphonse D. Firebaugh, an individual trading as World Distributing Co., with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., was associated with and was a representative of corporate respondent, E. H. Roberts Portrait Co. Said respondent also used the address 612 Loew's State Building, Los Angeles, Calif.

Respondent, Glen Harrison, an individual trading as Union Distributing Co., with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., was associated with and was a representative of the corporate respondent, E. H. Roberts Portrait Co. Said respondent also used the address General Delivery, Baton Rouge, La.

Respondent, Frank J. Holihan, an individual trading as Vanderbilt Arts Association, with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., was associated with and was a representative of the corporate respondent, E. H. Roberts Portrait Co. Said respondent also used the address General Delivery, Hollywood, Calif.

Respondent, Chas. A. Huff, an individual trading as Southern Portrait Studios, with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., was associated with and was a representative of the corporate respondent, E. H. Roberts Portrait Co. Said respondent also used the address Box 163, Henderson, Tex.

Respondent, A. W. Merriner, an individual trading as American Portrait Association, with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., was associated with and was a representative of the corporate respondent, E. H. Roberts Portrait Co. Said respondent also used the address 415 West Broadway, Centralia, Ill.

Respondent, Paul E. O'Neill, an individual trading as Square Deal Portrait Co., with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., was associated with and was a representative of the corporate respondent, E. H. Roberts Portrait Co. Said respondent also used the address 1925 Eighth Avenue, Birmingham, Ala.

Respondent, R. T. Sherrod, an individual trading as Home Exhibit Club, with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., was associated with and was a representative of the corporate respondent, E. H. Roberts Portrait Co. Said respondent also used the address care of Mr. J. T. Sherrod, Pavo, Ga.

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Respondent, James Spearman, an individual trading as Universal Distributing Co., with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., was associated with and was a representative of the corporate respondent, E. H. Roberts Portrait Co. Said respondent also used the address Route 4, Gaffney, S. C.

Respondent, Howard Stebbins, an individual trading as Stebbins Advertising Co. and also trading as York Advertising Co., with his office and principal place of business at 1000 Holmes Street, Kansas City, Mo., was associated with and was a representative of the corporate respondent, E. H. Roberts Portrait Co. Said respondent also used the address 1284 North Parkway, Memphis, Tenn.

The above respondents named as being representatives of, and associated with, the corporate respondent did not maintain places of business where colored enlargements or miniatures of photographs and snapshots were made but, instead, transmitted all orders received by them to the corporate respondent and maintained as their business address the address of the corporate respondent. These respondents, for the purpose of convenience, will hereinafter be referred to as "retail operators."

Respondents, Ira Lowe, H. R. Burch, J. L. Gilmore, Paul Mobelvang, Homer Frease, and Howard Terry, were sales agents and employees of one or more of the respondents and aided, assisted, and cooperated with said respondents in selling and distributing E. H. Roberts Portrait Co.'s products to members of the consuming public.

Respondents, W. O. Coen, trading as United Art Studio, J. O. Philpot, trading as Acme Art Co., George R. Harris, trading as Windsor Studios, C. E. Hewell, Harry Caton, and L. F. Poe, were named and served as respondents herein, but there is no evidence in the record to show that said respondents participated in any of the activities hereinafter described.

PAR. 2. All of the respondents hereinabove named were engaged in the sale and distribution of tinted or colored enlargements or tinted or colored miniatures of photographs or snapshots and frames therefor. Said respondents caused said products, when sold, to be transported from their place of business and the place of business of the corporate respondent, E. H. Roberts Portrait Co., in the State of Missouri to 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 said business, respondents were engaged in direct and substantial competition with various corporations, partnerships, and individuals who were also engaged in the sale and distribution in commerce between and among the various

States of the United States of tinted or colored enlargements and tinted or colored miniatures of photographs or snapshots and frames therefor.

PAR. 4. The corporate respondent, E. H. Roberts Portrait Co., has for several years maintained its place of business at 1000 Holmes Street, Kansas City, Mo., where colored enlargements or miniatures of photographs and snapshots were made and where said corporate respondent maintained stocks of frames for said enlargements and miniatures. The corporate respondent does not conduct a retail business primarily but sells such products to various representatives or retail operators, who in turn sell either direct or through sales agents to the consuming public. The business of selling corporate respondent's enlargements and miniatures of photographs and snapshots and frames therefor was accomplished by a well-coordinated plan or procedure, hereinafter more fully described, in which all of said respondents participated and cooperated.

PAR. 5. The various retail operators, including those named as respondents herein, sold the products of the corporate respondent either direct to the purchasing public or through sales agents and maintained a business address at the office of the corporate respondent, namely, 1000 Holmes Street, Kansas City, Mo. In addition, said representatives did business under various trade names which included as a part thereof such terms as "Art Studios," "Art Institute," and "Art Association," and other fictitious names, which caused customers dealing with them to believe that such respondent retail operators owned or operated or were connected with art studios, institutes of art, or places of business where colored enlargements or miniatures of photographs or snapshots were made.

In truth and in fact, neither the corporate respondent nor the respondent retail operators owned, operated, or controlled an art studio and did not constitute an art institute or an art association. The corporate respondent merely maintained and operated a commercial establishment wherein enlargements and miniatures of photographs and snapshots were made and colored and where a stock of frames therefor was maintained. The respondent retail operators maintained no place of business at the address of the corporate respondent as represented by them on their order blanks, stationery, and other material but used said address as a mailing address where correspondence was received and either forwarded, answered, or otherwise disposed of by employees of the corporate respondent. Said respondent retail operators maintained no place of business other than the mailing address at the address of the corporate respondent.

PAR. 6. The corporate respondent and its officers maintained close cooperation with and supervision over, the sales activities and business practices of retail operators and their agents and salesmen handling the products of the corporate respondent. The corporate respondent advised with the various retail operators, including those named as respondents herein, with reference to the selection of trade names, the use of the address of the corporate respondent, the drafting of sales contract forms, and the use of sales talks. The corporate respondent also supplied various retail operators with contracts, receipts, notes, and other printed matter, which were charged to their accounts. The corporate respondent also maintained active open accounts with various retail operators producing a satisfactory volume of business and establishing acceptable credit on the books of the corporate respondent.

All mail addressed to the respondent retail operators under their various trade names at the address of the corporate respondent was handled by the corporate respondent without expense to said respondent retail operators, and where such correspondence required replies such replies were made by the corporate respondent under the particular trade name of the respondent retail operator. All c. o. d. receipts and other payments received in this manner were credited to the respective accounts of the respondent retail operators.

PAR. 7. Respondent retail operators employed salesmen or sales agents who contacted members of the purchasing public in connection with the sale and distribution of the products of the corporate respondent. This salesman first endeavored to sell such customer a colored enlargement or a colored miniature of a photograph or snapshot. In so doing, samples of various enlargements and miniatures were exhibited to the customer. In the course of the sales talk the salesmen referred to the colored enlargements or colored miniatures offered for sale as being paintings, portrait paintings, oil paintings, or paintings finished by hand. In many instances such salesmen informed the purchaser that such enlargements or miniatures were being sold at a special or reduced price, as an advertising offer, or as an introductory offer.

The colored enlargements and colored miniatures offered for sale by the respondents were not paintings and were not being offered at a special or reduced price, but, instead, the price so charged was the usual and customary price charged for such enlargements and miniatures. While attractive specimens of the purported type of work to be done were exhibited as samples, the final product delivered by the respondents was in many instances inferior to the sample submitted.

In selecting snapshots and photographs for enlargements or miniatures, respondent retail operators or their sales agents approved and accepted photographs and snapshots which were inferior in various essentials from the photographic standpoint and which were fundamentally incapable of actually producing good enlargements or miniatures.

A painting is understood by artists who paint pictures, photographers who color photographs, and the general public, as an original representation by the painter of a design, image, or object on a surface by means of paint, either pastel, water color, or oil; a free-hand 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 enlargements and miniatures offered for sale and sold by respondents were not paintings, oil paintings, or portrait paintings. Said enlargements and miniatures were in fact colored photographs 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, was then made from the negative on specially prepared paper which would take liquid color. The photographic enlargement or miniature was then colored with the use of water color or other powdered pigments soluble in water sprayed upon the photographic reproduction through the use of a mechanical air brush operated by compressed air, a portion of the colors being supplied by hand through the use of a sable brush. The corporate respondent did not use oil paint in finishing or coloring said enlarged photographs or miniatures, and such pictures were in fact merely inexpensive photographic reproductions colored and reproduced in large quantities.

PAR. 8. In connection with representations as to special offers, the various respondent retail operators and their sales agents have from time to time represented to customers and to prospective customers that a drawing contest would be held in a certain community for the purpose of deciding who should be one of the few lucky persons to have a painting placed on exhibition in connection with a special advertising or special introductory offer. In connection with drawing contests, the customer was induced to take a chance by drawing from a number of envelopes containing slips of paper, one such slip being a so-called lucky coupon or lucky certificate. It was further represented by respondent retail operators and their sales agents that the purchaser who drew the so-called lucky coupon or lucky certificate would be entitled to receive a hand-painted oil portrait of any snapshot or

photograph on a background of durable material at a special or reduced price. Said respondents further represented that such paintings or hand-painted products were regularly sold at prices ranging from \$15 to \$30.

The envelopes were so manipulated by the sales agents that an acceptable customer invariably drew a lucky coupon or a lucky certificate, of which the following is an illustration:

SPECIAL

This Entitles the Holder to Your Special Advertising Offer

VAN DYKE STUDIOS

Various other methods and practices not specifically set out herein were used by respondent operators and their sales agents in carrying out the said so-called drawing-contest scheme, and the representations and sales methods used in furthering the scheme often varied with different sales.

Upon completion of the draw and the delivery of a snapshot or photograph and \$1.98, the customer was handed a receipt in which it was recited that this advertising offer was conditional to the extent that the portrait be framed within a reasonable length of time. Typical of such receipt is the following:

WESTERN STATES PORTRAIT CO.

1000 Holmes Street, Kansas City, Mo.

Date----- 193-----

By paying our representative \$-----, we will make for the undersigned----- of our HIGH GRADE PORTRAITS in the most pleasing size in the NEWEST OCTAGON DESIGN, same as sample shown.

This extraordinary offer is for advertising purposes only to introduce portraits of a higher grade, hand finished by a talented artist; therefore to assure us of a lasting advertisement this offer is conditional to the extent that the portraits be framed within a reasonable length of time.

Before finishing, our field artist will call on you with a sketch of your photograph and get full particulars for finishing; at that time artwork frames of the newest design will be submitted for your selection. In the event a frame is not selected, the sketch will be left with you until a suitable frame is selected, elsewhere, then the portrait will be finished at no additional cost.

Countermands not accepted. Verbal agreements not recognized.

This offer cannot be extended. All work strictly guaranteed.

Customer -----

----- Address -----

Representative

Those drawing so-called lucky coupons or lucky certificates have been led by said representations, including the said drawing contest

conducted in connection therewith, to believe that said coupon or certificate placed the holder thereof at a distinct financial advantage in purchasing a so-called painting or portrait, and such holders have been induced thereby to enter into contracts for the purchase of a so-called painting or portrait. The coupons or certificates gave the holders thereof no advantage in price whatsoever over any other purchaser, as practically all acceptable customers were permitted to secure a lucky certificate or special certificate or lucky slip and all purchasers could purchase said paintings and portraits at the price used by said respondents in making a so-called special introductory advertising offer. The procedure, known to the trade as the draw, was merely a scheme used to make entry into the home of prospective customers and to obtain from them a picture or snapshot and thus to more easily facilitate the sale of a picture and frame.

PAR. 9. In the first initial contact, the sales agent or salesman did not refer to or mention the frame and did not disclose to the purchaser that the picture would be of unusual shape and design requiring a frame which could be procured only from the respondents.

The second sales agent, designated as a "proof passer" in the trade, later appeared with an uncolored rough sketch or proof of the enlarged photograph or miniature, exhibited the same to the customer, obtained coloring instructions, collected the cost of the enlargement or miniature, and endeavored to sell the customer a frame for the picture. The contract under which the picture was sold usually specified that before finishing, a field artist would call with a sketch of the photograph and get full particulars for finishing and at that time would submit art-craft frames of the newest design for the customer's selection. It was further provided that in the event a frame was not selected, the sketch would be left with the customer until a frame could be selected elsewhere, the picture to be finished then without extra cost.

PAR. 10. In the operation of this plan or scheme, the major portion of the profit was realized from the sale of frames. If the customers refused to purchase a frame from the field artist because of price, quality, or design or for other reason, the customer on various occasions was then informed by the sales agent or field artist for the first time that a frame for the picture could not be purchased from any source other than through his company; that the company he represented manufactured the only frame that would fit the picture; and that the picture would not hold its color or be of value unless it was framed. From time to time the attention of the customer was called to the agreement to protect and exhibit the picture and to the obliga-

tion of the customer under the contract to buy a frame and to the fact that the customer could not get the picture painted without the frame.

Customers on occasion were further informed that it was required that all portraits be frame in 10- by 16-inch frames obtained either from retail operator's company or elsewhere. In the event the customer refused to buy a frame from the second agent and elected merely to have the picture colored and finished for the sum agreed upon and paid, the matter of purchase of a frame was further deferred until the delivery of the finished picture or colored enlargement by a third sales agent known to the trade as a delivery man. This agent making delivery of the finished or colored enlargement in many instances delivered or presented the same to the purchaser in a frame and endeavored to induce the purchaser to accept the picture and the frame. In the event the customer finally refused to buy a frame said agents in some instances refused to treat the purchase of the colored enlargement as a separate, independent transaction concluded upon full payment for the enlargement and refused to finish and deliver the picture because the customer would not buy a frame therefor and continued to hold the completed picture and the original photograph or snapshot from which it had been made pending still further efforts to effect the sale of a frame.

In various instances retail operators and sales agents in displaying samples of pictures to purchasers concealed from said purchasers at the time the colored enlargement was ordered, the fact that the finished product would be octagonal in shape and would be delivered in a frame of peculiar octagonal convex form and shape and that it would be impossible for the customer thereafter to obtain a frame to fit said picture except from and through said respondent salesmen at prices fixed by them.

Pictures and frames alike were produced by E. H. Roberts Portait Co., and as sold by respondent retail operators and sales agents were generally octagonal in shape with raised or convex surface. While the frames sold by respondents were made by, and might be obtained from, several manufacturers of frames, and the designs thereof were not patented, such frames could not ordinarily be obtained in photographic supply stores and furniture stores accessible to the consuming public. Retail operators and sales agents in some instances represented as customary, regular prices or values of frames, prices and values which were in fact substantially in excess of the prices at which frames of similar type and quality were usually and customarily sold in the normal and usual course of business.

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PAR. 11. In those instances where the customer agreed to purchase a frame with the picture, this was usually handled by the sales agent by acceptance of an installment note to cover the unpaid balance. This note was made payable either to the corporate respondent, E. H. Roberts Portrait Co., or to the order of the retail operator under the trade name adopted by him and delivered to the corporate respondent, who then proceeded with the collection of said note. The amounts collected by the corporate respondent were credited to the account of the respondent retail operator forwarding said note. In making collection the corporate respondent charged a commission, which was either a flat charge for each note or 15 percent of the amount collected. The sum so collected and credited to the respondent retail operator's account could be obtained by such respondent retail operator at any time upon request.

PAR. 12. The use by the respondents of the aforesaid acts and practices and methods in connection with the offering for sale and sale of said products had the tendency and capacity to mislead and deceive the purchasing public concerning the quality and value of respondents' products and the nature of the business conducted by the respondents and has caused purchasers to believe that the representations so made and used by the respondents were true and has caused a substantial number of the purchasing public to purchase said products under the erroneous and mistaken belief that they were securing high-grade, quality portraits, paintings, oil paintings, or miniatures and picture frames of exceptional value.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, a stipulation as to the facts entered into between certain respondents herein and Daniel J. Murphy, assistant chief trial counsel for the Commission, providing, among other things, that without further evidence or intervening procedure, the Commission might 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 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 the respondents, E. H. Roberts Portrait Co., a corporation; Edward H. Roberts, individually and as president of E. H. Roberts Portrait Co.; Harold S. Roberts, individually and as vice president of E. H. Roberts Portrait Co.; Wayne Davidson, individually and trading as Apex Studios; Alphonse D. Firebaugh, individually and trading as World Distributing Co.; Glen Harrison, individually and trading as Union Distributing Co.; Frank J. Holihan, individually and trading as Vanderbilt Arts Association; Chas. A. Huff, individually and trading as Southern Portrait Studios; A. W. Merriner, individually and trading as American Portrait Association; Paul E. O'Neill, individually and trading as Square Deal Portrait Co.; R. T. Sherrod, individually and trading as Home Exhibit Club; James Spearman, individually and trading as Universal Distributing Co.; Howard Stebbins, individually and trading as Stebbins Advertising Co. and also trading as York Advertising Co.; or trading under any other name or names, and H. R. Burch; Homer Frease; J. L. Gilmore; R. F. Jones; Ira Lowe; Paul Mogelvang; and H. D. Terry (referred to in the complaint as Howard Terry), individuals, and their respective representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale and sale and distribution in commerce as commerce is defined in the Federal Trade Commission Act, of tinted or colored enlargements or miniatures of photographs and snapshots and of frames therefor, do 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 "paintings," "oil paintings," "portrait paintings," or "paintings finished by hand," or the word "painting" either alone or in conjunction with any other word, words or terms to designate or describe colored or tinted photographs, photographic enlargements or reductions, or other pictures produced from a photograph base or impression;

(3) Representing through the use of a draw or draw contest or so-called lucky coupons or lucky certificates, or any similar device, plan, or scheme that any customer thereby will obtain a financial advantage

or receive a 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 for sale or sold at a reduced price as an advertising offer or introductory offer, or representing in any manner that the 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 the picture thereafter delivered is of the same quality, design, and workmanship as said sample;

(6) Using trade names consisting of or including such terms as "art studios," "art institute," or "art association" or any other fictitious name of similar import and effect 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 their 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) Failing or refusing to deliver the finished picture or pictures and the original when the customer refuses to purchase a frame therefor when such customer was not advised that the purchase of a frame was a condition precedent to the contract;

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

It is further ordered, That the complaint be, and it hereby is, dismissed without prejudice as to the following respondents: Howard V. Roberts, secretary and treasurer of E. H. Roberts Portrait Co.; P. W. Berry, individually and trading as National Art Association; E. P. Bingham, individually and trading as Metropolitan Studios and also trading as Metropolitan Portrait Studios; J. E. Bowers, individually and trading as Interstate Studios; W. C. Bush, individually and trading as Esquire Studios; Chris Christensen, individually and trading as Van Dyke Studios; W. O. Coen, individually and trading as United Art Studio; George N. Conrad, individually and trading as Central Studios; DeForest Edwards, individually and trading as Superior Art Association; Virgil S. Firebaugh, individually and trading as Universal Art Studios; George Gulberg, individually and trading as United Artists Association; Robert Hames, individually and trading as United Artist Studio; Floyd Hammer, individually and trading as Mid-Continent Distributing Co.; George R. Harris, individually and trading as Windsor Studios; Mrs. Jack M. Jelly, individually and trading as Western Academy of Art; Jack H. Kane, individually and trading as Memorial Studios and also trading as Metropolitan Studios and also trading as Metropolitan Portrait Studios; Loyce E. Kennedy, individually and trading as Western States Portrait Co. and also trading as Western Portrait Co.;

Harry E. Kent, individually and trading as Beaux Art Studios and also trading as Eldred Distributing & Sales Co.; W. Kiker, individually and trading as United Art Studios and also trading as Western States Portrait Co.; Theodore Leff, individually and trading as American Portrait Co., and also trading as United Artists Association; Edward F. Lingo, individually and trading as Linwill Portrait Co., and formerly trading as United Artists Association; M. J. McConahay, individually and trading as National Art Co.; R. H. Mercer, individually and trading as Eastern Portrait Co.; J. P. Nelson, individually and trading as Acme Art Association; F. C. Mowery, individually and trading as Paramount Service Co.—Texas; F. N. Nelson, individually and trading as Eastern Portrait Co.; J. P. Nelson, individually and trading as Tiffany Service Co.; R. Oates, individually and trading as Continental Art Studios; C. J. O'Keefe, individually and trading as Venetian Art Distributors; J. O. Philpot, individually and trading as Acme Art Co.; Ray T. Rice, individually and trading as Empire Art Service; C. A. Shields, individually and trading as Miniature Arts Co.; C. Q. Simmans, individually and trading as Royal Art Studios, and also trading as Royal Studios; Harold K.

Stice, individually and trading as Stice Advertising Co.; O. L. Talbott and R. R. Green, individually and trading as National Portrait Co.; Ed Thedell, individually and trading as the Art Studios; Arthur W. Thomson, individually and trading as National Academy of Art; Orville J. Weeks, individually and trading as Central Advertising Co.; Oscar White, individually and trading as Twentieth Century Art Association; George Wiesner, individually and trading as Peerless Portrait Co.; L. L. Wittenberg, individually and trading as United Art Association; and

Ned Adamson, Houston Agee, L. C. Allgeier, W. L. Andersen, Herbert Atkins, James L. Bardin, Bud Bates, E. A. Benedict, A. W. Betts, Jack Bingham, Louella Brooks, C. E. Cantrell, Harry Caton, Rita Cauffiel, Susie Clark, Max Cohn, Edith Colburn, N. J. Conahy, R. Cooke, Betty Coratolo, Ensil Cross, Jack Dalton, M. Davis, A. K. DeVare, T. W. DeVore, Emil J. Dittmer, Patrick J. Durkin, Williard Dzink, Lee Eastman, F. M. Eaton, C. Eberhart, Dr. Echert, John Enyeart, Glada Evans, Pat Evans, Yeada Evans, O. S. Ford, J. Fraser, Merlin Froland, H. C. Gilmore, O. M. Gilmore, Roy Z. Goodwin, Carl Grace, Clarence Gray, Art Greene, Jacob M. Gross, G. R. Haing, W. A. Haire, Cora Hall, Melvin E. Hamilton, J. G. Hane, M. E. Hansen, James Hardy, A. R. Harris, J. E. Hartley, A. K. Hayden, George R. Hayne, J. G. Hayne, K. E. Heard, M. E. Hedge, W. J. Heimer, C. E. Hewell, Hobart Hodler, W. Holcomb, V. I. Holcomb, L. H. Holt, L. J. Holt, C. A. Hough, L. Howard, W. O. Huff, R. B. Jarke, Jack M. Jelly, Edwin Jones, Ethel Judd, May Justice, Lucille Kamp, A. Kane, Herb Kellar, H. L. Kennedy, L. N. Kennedy, Ray Kent, Roy Kent, Helen J. Kuhns, Milan Kukor, Don Kyees, Lloyd Kyees, C. J. LeCompte, Elden P. LeCompte, Floyd Lingo, D. A. Lions, Lola Lions, Richard R. Lions, Ted A. Lions, Wayne W. Lions, W. B. Lovings, Mary Lowe, Esther Lowery, J. N. McFarland, J. Mantell, G. J. Manuel, L. F. Marsden, L. F. Marselen, Red Melvin, J. L. Moak, James R. Monroe, Bill Moore, K. C. Murphy, G. W. Myers, K. F. Myers, Mrs. Leslie Nelson, Teddy Orcutt, Tom Parker, B. E. Patton, A. J. Paulson, Ann K. Pearce, Ruth Pearce, Cecil Phillips, L. F. Poe, Mrs. L. F. Poe, Fred Purselley, Ider Rekkedal, Dell Reno, Allen Rensel, Dan Repert, G. A. Rucker, Margaret Ruth, Melvin E. Sarsan, Vern Schultz, A. N. Sinnon, Don D. Smith, R. C. Speece, Gordon Stensrud, Milton Stensrud, Earl Stice, Marjorie Hearn Terry, E. O. Tidlund, J. P. Townsend, C. E. Turner, William Vesey, Cecil Vance, Dona Vroman, Harry Vroman, Chase Wank, J. W. Ward, J. Warren, W. Wayne, Paul H. Webb, C. L. Williams, D. E. Williamson, Thomas Wills,

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W. F. Wisdon, Ruby Witt, Francis Woodbain, Francis D. Woodham, Mrs. Francis D. Woodham, Charles Worth, B. U. Youmans, and Rose Ann Young.

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

Syllabus

IN THE MATTER OF

JOSEPH SCHECTER AND ARNOLD STOCKENBERG, TRADING AS S & S TIE CO.

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

Docket 5110. Complaint, Jan. 3, 1944—Decision, June 5, 1947

Where two individuals, engaged in the interstate sale and distribution of patterns and printed instructions for use in making neckties, and in soliciting persons to make such products, through such want ads in newspapers and periodicals and other advertising media as "Make money sewing at home. No selling. Materials furnished. Easy. Pleasant. Write," etc., and "Money for your spare time sewing at home."—

- (a) Falsely represented through statements made in form letters sent to those replying thereto that the contract offered by them was a contract for services, incident to which they would pay the makers of the ties 15 cents apiece, and that the sum of \$7 required thereby to be paid to them by applicants for positions as such makers was solely to defray the cost of patterns and instructions;

The facts being that, on the contrary, the contract offered by them was a contract of purchase and sale of materials, patterns and instructions for making neckties, and the \$7 required to be remitted was the purchase price for the "kit" of materials, patterns, and instructions; and

- (b) Represented that they would furnish the materials for making the neckties in sufficient quantities to insure continuous, profitable employment, without charge in addition to said stated payment of \$7;

The facts being that, following the receipt of the money and the signed agreement referred to and the shipment to applicants of patterns and instructions and sufficient material to make two neckties, they did not, in accordance with their undertaking, furnish materials in sufficient quantities to afford continuous or profitable employment without further charge;

With effect of misleading and deceiving a substantial number of the purchasing public into erroneous beliefs, and thereby into the purchase of substantial quantities of their said products, and with capacity and tendency so to do:

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

In proceeding in question in which respondent sellers of patterns and printed instructions for use in making neckties, were also charged, in addition to misrepresenting the nature of their contract as one for service, and failure to abide by their undertaking to supply materials, with falsely representing that they were makers and vendors of neckties and would absorb all shipping and mailing costs of those entering into employment with them, and would pay the employee makers fifteen cents per tie, there was not sufficient evidence to permit the Commission to make any finding concerning the truth or falsity of such additional alleged misrepresentations, and no finding was made with respect thereto.