

Syllabus

IN THE MATTER OF

GEORGE D. NEWMAN, INDIVIDUALLY AND TRADING AS
KIDDIELAND STUDIOS AND BEACON STUDIOSCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914*Docket 5425. Complaint, Mar. 4, 1946—Decision, July 15, 1947*

Where an individual engaged in the production and interstate sale and distribution of plain and tinted or colored photographs and enlargements thereof, and in contacting prospective customers through advertisements in newspapers, periodicals, business directories and circulars, and through sales representatives including particularly so-called coupon or "caller-out" salesmen, whom he supplied with credentials, attractive samples, and printed certificates or "special offer" coupons which were sold for 95 cents or other stated sum and purportedly entitled the customer to receive without additional cost a photograph of specific size, type, and finish—

- (a) Represented, through said coupon salesman, to the prospective purchaser, that he was not obligated to buy any photograph other than the one for which 95 cents or other sum was paid in connection with the said "special offer," and led and induced customers to believe that such original coupon picture offered was a bona fide one not related to or connected with or conditioned upon any other transaction or contractual arrangement;

The facts being such offers were not made in good faith, but to obtain a down payment from the customer and place him in a position of losing the same unless, in response to high pressure tactics of subsequent agents presenting proofs, who sought to induce him to purchase further pictures at greatly increased prices, he yielded to such demands, after being informed that if he did not order at least three additional pictures he would get nothing; and, in cases where a coupon customer refused to make such additional purchases, no further consideration was given him and his complaints were ignored, with the result that he lost the 95 cents or other sum invested in the coupon or certificate;

- (b) Represented to the customer, through salesmen, that the picture would be taken on the date he selected and at the time specified, that proofs would be shown on a certain date, and the finished picture be delivered on a named date; and

- (c) Represented that the pictures to be made would be identical with the samples exhibited and corresponding to the number ordered;

The facts being that, while during the war delay in furnishing finished products was frequently due to his inability to secure photographic paper, and in some instances the inferior quality of photographic paper, on many occasions sitting for photographs, return of proofs and delivery of finished pictures were not made in compliance with his said sales representations; photographs delivered were inferior in character, quality, and workmanship to the samples used in effecting sales, and particularly so in the case of the refusal of a coupon purchaser to order additional photographs; and fewer photographs were delivered than were ordered and paid for;

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- (d) Represented falsely that a steel-gray finish photograph offered for 50 cents as an "invitation offer" sold regularly for \$2, and urged the prospective customer to distribute to his friends or save for a later date the four coupons attached to the printed offer of said "beautiful 7 x 10 Silvertone Portrait," and represented as a "special," the offer of so called "Etchcraft Portraits," for 50 cents each, one to a customer; and
- (e) Represented, on occasion, through his sales representatives, that the colored photographs sold by him were "paintings" and "oil paintings"; and
- (f) Permitted various third parties, engaged under separate studio trade names, and including two studios doing business respectively under the names "Copley" and "Iroquois Studios," to make use of his business office, street address, and studio facilities, including his telephone number, and thereby falsely to hold themselves out to the public as owners and operators of photographic studios and equipment, and obtain credit and business standing to which they were not entitled;

With effect of misleading and deceiving members of the purchasing public, through said acts, practices, and methods—including particularly failure of said individual to disclose the real character of the coupon or certificate offer made by him—as to the actual character and meaning of his original offer, including actual identity of product offered, and as to the actual character and meaning of his original offer, including actual identity of product offered, and as to character, quality, value, and price of his products, and the status of said third parties as established, operating, responsible studios, and of causing a substantial number of the purchasing public, by reason of the erroneous beliefs thus engendered, to purchase substantial quantities thereof, and with capacity and tendency so to do:

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

Before *Mr. Everett F. Haycraft*, trial examiner.

Mr. William L. Pencke for the Commission.

Mr. James F. Cavanagh, of Boston, Mass., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that George D. Newman, individually and trading as Kiddieland Studios and Beacon Studios, hereinafter referred to as respondent, has 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 George D. Newman is an individual trading as Kiddieland Studios and Beacon Studios from the principal address 30 Huntington Avenue, Boston 17, Mass. Branch studios are also operated by said respondent under the name Beacon Studios at

175 State Street, Springfield, Mass., and at 115 Bank Street, New London, Conn.

PAR. 2. Respondent George D. Newman is now and for more than 5 years last past has been engaged in the production and sale of plain and tinted or colored photographs and enlargements thereof. Respondent Newman causes and at all times mentioned herein has caused said products, when sold, to be transported from the State of Massachusetts, or other point of origin, to the purchasers thereof located in various other States of the United States and in the District of Columbia.

PAR. 3. Customers and prospective customers are now and have been variously contacted by respondent by means of advertisements appearing in newspapers, periodicals, business directories, and circulars, all of general circulation, through the medium of the United States mails, and by the use of sales representatives, including particularly so-called coupon or "caller-out" salesmen, appointed by respondent as selling agents to act in his behalf. In the course and conduct of his said business in connection with and for the purpose of inducing the sale and distribution of his said products in commerce, respondent, for more than 5 years last past has made, has continued to make, and is now making, various false and misleading advertising and sales representations and has engaged in and still employs various unfair and deceptive acts and practices in commerce.

PAR. 4. With a view to effecting the sale of his said products respondent relies upon the use of said advertising material primarily to obtain the names and addresses of some prospective customers. Other prospective customers are located and contacted by the said coupon or "caller-out" salesmen, and it is and has been the general practice of respondent to obtain numerous orders for pictures through the solicitation of such salesmen sent out from his studios to represent him. Each of said salesmen is supplied with proper credentials, with attractive photographic samples represented to the public as typical of the class of work done by respondent's studios, and with printed "certificates" or "special offer" coupons which are sold to customers for 95 cents or other stated sum, each purportedly entitling the customer to receive, without additional cost, a specific size, type, and finish of photograph. Said coupon salesman at the time the coupon is sold represents to and impresses upon the purchaser that he is not obligated to buy any photograph or photographs other than the one for which 95 cents or other sum is paid in connection with the said "special offer." Each coupon or certificate thus sold, in the body

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thereof and in a detachable stub, contains space for memorandum entry of the day and the hour selected by the customer to have the picture taken. The original coupon salesman retains all of any sum received by him from the customer for a coupon. Having sold a coupon entitling the customer to only one picture, and having arranged for the time a sitting is to be had, the coupon salesman takes his departure, sending his stub entry of the transaction in to the studio.

A photographer from respondent's studio then follows up the coupon salesman, makes the necessary exposure for the one picture and transmits the exposed negatives, represented as being four to six in number but usually two, to respondent, who develops the same and makes proofs therefrom. Said proofs in turn are delivered by a third salesman or "proof-passer" of respondent, who with the use of such proofs, endeavors to effect the sale of additional pictures to the customer at prices in excess of the original "special offer" price.

Finished pictures are ordinarily delivered through the mails to customers located principally in various parts of the New England States. Respondent's various salesmen respectively assure the customer that the picture will be taken on the date selected by the customer and at the time specified, that proofs will be shown on a certain date, that the finished pictures will be delivered on a specified date, and that each picture made, in grade, type, quality and character of workmanship, will be equal to the sample shown in effecting the sale.

Purchasers of coupons or certificates stated to be good for one photograph each in studios operated by respondent are and have been given to understand in each instance that they are and were dealing with duly constituted agent or sales representative of respondent, and they believe and have been led to believe, and rely and have relied upon the belief, that such agents and representatives have and have had full authority to make the representations employed by them in consummating sales and collecting money for the said products of respondent.

When respondent's salesman calls upon the customer with proofs of negatives made by respondent the customer learns for the first time the real purpose for which the coupon was sold to him. Instead of permitting the customer to select a proof for the one picture called for in the coupon purchased respondent's salesman immediately launches upon a sustained, high-pressure sales talk to induce the customer to purchase additional photograph, at greatly increased prices.

The attitude and demeanor of respondent's studio representative toward the customer is and has been determined in each instance by the fact as to whether the customer will agree to buy extra pictures.

Upon the refusal of the customer to purchase pictures in addition to the one called for in the coupon, the "proof-passing" salesman, upon occasion, goes into a "rage," becomes abusive and discourteous, takes the customer to task for assuming that the studio can furnish a picture for 95 cents or less sum, avers that the preceding salesman had no right to sell more than one coupon at any given address, and informs the customer that the coupon is worthless unless more pictures are bought; that if the customer does not order at least three or more additional pictures he will get nothing.

Various excuses and explanations are and have been given as to why respondent cannot make a single picture, and finally, on occasion, respondent's sales representatives have frankly admitted to the customer that the studio could not make the one picture called for in the coupon without sustaining a loss thereon.

PAR. 5. In approaching a customer with the coupon offer for a single picture respondent's said sales agents carefully refrain and have refrained from disclosing to the customer that the real purpose in submitting such offer was and is to induce the purchase of something the customer did not have in mind and did not intend to buy or understand he was buying, namely, extra or additional photographs sold at a substantial profit. In truth and in fact, respondent's single-picture coupon offer was and is in reality nothing more or other than what is known in the industry as a "bait" or "come-on" offer employed to place the customer in a position where he must buy more pictures at greater cost in order to obtain the one already bought and already paid for.

From time to time in cases where coupon customers refuse and have refused to purchase additional pictures no further consideration has been given to the customer by respondent, the complaints of the customer have been ignored, no refund has been made to him, and the customer has thereby sustained the loss of the 95 cents or other sum invested in the coupon or certificate.

PAR. 6. Respondent further, trading as Kiddieland Studios, Beacon Studios, and under other trade names, has represented that a steel-gray finish photograph, offered for the price of 50 cents as an "invitation offer," sells regularly for \$2. So-called "Etchcraft portraits," selling for 50 cents each, one to a customer, have been represented as comprising a "special offer," and on occasion respondent's sales representatives have represented to customers that the colored photographs sold by respondent are "paintings" and "oil paintings."

PAR. 7. In other coupons or certificates issued by respondent and in advertising matter of general circulation, respondent has repre-

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sented that sepia or brown-toned pictures, designated as a "gold-tone hand colored portrait" and sold by him through the medium of a "special offer" 95 cents coupon, are and were genuine gold-tone productions; and that the said coupon price of 95 cents stated in such offer was and is a "special" or "introductory offer" which might not be continued.

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

The use by respondent of the words "gold-tone" in advertising and upon coupons to obtain customers for the purchase of respondent's products is a representation that respondent produces and sells genuine gold-tone pictures. In truth and in fact the colored photograph advertised and represented by respondent to be a "gold-tone hand colored" picture is not in fact a gold-tone picture but is instead a slightly tinted brown or sepia print which costs much less to produce.

PAR. 8. By said representations and practices as hereinbefore detailed and alleged respondent leads and induces and had led and induced customers to believe that the said original coupon picture offer is and was a bonafide sales offer not related to or connected with or conditioned upon any other transaction or contractual arrangement that sittings for photographs, the return of proofs for selection, and the delivery of finished pictures would be made in good faith at the times and upon the dates specified by respondent's representatives; that the pictures to be made would be equal to and identical in character, quality, and workmanship with the samples exhibited in obtaining orders therefor and corresponding to the number ordered; that respondent's so-called "special" and "invitation" offers are and were actually special and invitation or introductory offers of reduced prices made only for a limited time; and that tinted or colored pictures sold by respondent are genuine paintings or oil paintings done by hand without the use of a camera or photographic image.

PAR. 9. The foregoing representations and statements are false, misleading, and deceptive. In truth and in fact, respondent's so-called coupon and certificate offers calling for a single picture are not and have not been made in good faith to customers but are and have

been made for the purpose of obtaining a down payment from the customer and placing him in the position of losing said down payment unless additional pictures are ordered at higher prices, thereby enabling respondent to make a substantial profit on the transaction. Sittings for photographs, the return of proofs and the delivery of finished pictures are not and have not been made in compliance with sales representations of respondent. Respondent's offers designated as "special" or "invitation" are not special or limited in point of time or otherwise but are on the contrary offers that have been made continually by respondent over a period of years in the normal course of his business operations. Respondent's photographs, offered at 50 cents, do not sell for \$2 normally and have never been sold for such price in the regular course of business. Respondent's pictures which have been represented to customers as "paintings" or as "oil paintings" are not genuine paintings or oil paintings in the accepted meaning of such terms, but on the contrary are merely photographs to which color has been added by the use of cotton applied by hand. Photographs delivered by respondent are and have been frequently inferior in character, quality and workmanship to the samples used by respondent in effecting sales. This is and has been particularly true following the refusal of a coupon purchaser to order additional photographs. On many occasions a fewer number of photographs than those ordered and paid for have been delivered by respondent's studios.

PAR. 10. Respondent in further connection with the operation of his said photographic studio at 30 Huntington Avenue, Boston, Mass., from time to time, by arrangements made with various third parties, has permitted them to use and they have used as their business office, employing separate studio trade names for themselves, the actual street address and studio facilities, including telephone number of the respondent, at the same address, 30 Huntington Avenue, Boston, Mass. Said parties so using respondent's studio and street address and the said facilities existing there, actually had no studio equipment of any character there or elsewhere, and they did not own, conduct, or control any photographic studio in any accepted meaning or sense of the term. Two such alleged studios so employing respondent's business address, thereby falsely holding themselves out to the public as owners and operators of photographic studios and equipment there, and obtaining credit and business standing and identity to which they were not entitled, were known respectively as Copley and Iroquois Studios.

The practice of respondent in permitting others who neither owned, operated, nor controlled a photographic studio or any equipment

therefor to use his studio address and equipment as and for their own in connection with fictitious studio trade names employed by them has, and has had, the capacity and tendency to mislead members of the public into the erroneous belief, and they have been led to believe, that they were contracting and dealing with established, operating, responsible studios, and to purchase the products of said alleged studios because of such beliefs so engendered. Respondent further, in thus permitting others to make such use of his address and business facilities has placed in their hands an instrument whereby they might deceive members of the consuming public into believing and they have believed that they were contracting and dealing with an established, operating, responsible studio, when such was not the fact.

PAR. 11. The use by respondent of the acts, practices, and methods aforesaid in connection with the offering for sale and the sale of his said products in commerce, and particularly the failure of respondent to disclose essential and important facts as to the real character of the coupon or certificate offer made by him has had and now has the tendency and capacity to and does mislead and deceive members of the purchasing public regarding the actual character and meaning of the original offer made by respondent, including the actual identity of the product offered for sale, and concerning the character, quality, value, and price of respondent's products, and leads and has led purchasers erroneously to believe that the said representations are and were true, and thereby causes and has caused a substantial number of the purchasing public, by reason of the erroneous beliefs so engendered, to purchase substantial quantities of such products.

PAR. 12. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury to the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 4, 1946, issued and subsequently served its complaint in this proceeding upon the respondent named in the caption hereof, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After respondent filed his answer, certain facts were stipulated in the record and certain exhibits introduced into evidence at a hearing before an examiner of the Commission theretofore duly designated by it, and it was further stipulated that the

Commission may proceed upon said facts and exhibits stipulated into the record to make its report stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on the complaint, answer, stipulated facts and other evidence, and recommended decision by the trial examiner; and the Commission, having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent George D. Newman is an individual trading as Kiddieland Studios and as Beacon Studios, with his principal office and place of business at 30 Huntington Avenue, Boston, Mass. He also maintained branch studios, one in Springfield, Mass., until the spring of 1944, and one in New London, Conn., until the spring of 1946. Respondent is now, and for more than 5 years last past has been, engaged in the production and sale of plain and tinted or colored photographs and enlargements thereof.

PAR. 2. In the course and conduct of his aforesaid business, respondent causes, and at all times mentioned herein has caused, his said products, when sold, to be transported from the State of Massachusetts or other point of origin to the purchasers thereof located in various other States of the United States, and maintains, and has maintained, a course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. Customers and prospective customers are now, and have been, variously contacted by respondent by means of advertisements appearing in newspapers, periodicals, business directories, and circulars, all of general circulation, and by the use of sales representatives, including particularly so-called coupon or "caller-out" salesmen, appointed by respondent as selling agents to act in his behalf. When the names and addresses of prospective customers have been obtained, it is and has been the general practice of respondent to obtain numerous orders for pictures through solicitation of salesmen sent out from his studios to represent him. Each of said salesmen is supplied with proper credentials, with attractive photographic samples represented to the public as typical of the class of work done by respondent's studios, and with printed "certificates" or "special

offer" coupons which are sold to customers for 95 cents or other stated sum, each purportedly entitling the customer to receive, without additional cost, a specific size, type, and finish of photograph. Said coupon salesman, at the time the coupon is sold, represents to and impresses upon the purchaser that he is not obligated to buy any photograph or photographs other than the one for which 95 cents or other sum is paid in connection with the said "special offer." Each coupon or certificate thus sold, in the body thereof and in a detachable stub, contains space for memorandum entry of the day and the hour selected by the customer to have the picture taken. The salesman retains all of any sum received by him from the customer for a coupon, leaves the coupon with the customer, and sends the stub showing the sale and the date of the sitting arranged to respondent. A photographer from respondent's studio then follows up the coupon salesman, makes the necessary exposure for the one picture and transmits the exposed negatives (represented as being four to six in number, but usually two) to respondent, who develops the same and makes proofs therefrom. Said proofs in turn are delivered by a third salesman or "proof-passer" of respondent, who, with the use of such proofs, endeavors to effect the sale of additional pictures to the customer at prices in excess of the original "special offer" price.

PAR. 4. Finished pictures are ordinarily delivered through the mails to customers located principally in the New England States. Respondent's various salesmen assure the customer that the picture will be taken on the date selected by the customer and at the time specified, that proofs will be shown on a certain date, that the finished pictures will be delivered on a specified date, and that each picture made will be equal in grade, type, quality, and character of workmanship to the sample shown in effecting the sale. Purchasers of such coupons or certificates are, and have been, given to understand in each instance that they are, and were, dealing with a duly constituted agent or sales representative of respondent, and they believe, and have been led to believe, and rely and have relied upon the belief, that such agents and representatives have, and have had, full authority to make the representations employed by them in consummating sales and collecting money for the said products of respondent. When respondent's salesman calls upon the customer with proofs of negatives made by respondent, the customer learns for the first time the real purpose for which the coupon was sold to him. Instead of permitting the customer to select a proof for the one picture called for in the coupon

purchased, respondent's salesman immediately launches upon a sustained high-pressure sales talk to induce the customer to purchase additional photographs at greatly increased prices. The attitude and demeanor of respondent's studio representative toward the customer is, and has been, determined in each instance by the fact as to whether the customer will agree to buy extra pictures. Upon the refusal of the customer to purchase pictures in addition to the one called for in the coupon, the "proof-passing" salesman, upon occasion, goes into a "rage," becomes abusive and discourteous, takes the customer to task for assuming that the studio can furnish a picture for 95 cents or less sum, avers that the preceding salesman had no right to sell more than one coupon at any given address, and informs the customer that the coupon is worthless unless more pictures are bought, that if the customer does not order at least three or more additional pictures he will get nothing. Various excuses and explanations are, and have been, given as to why respondent cannot make a single picture, and finally, on occasion, respondent's sales representatives have frankly admitted to the customer that the studio could not make the one picture called for in the coupon without sustaining a loss thereon.

PAR. 5. In approaching a customer with the coupon offer for a single picture, respondent's said sales agents carefully refrained, and have refrained, from disclosing to the customer that the real purpose in submitting such offer was, and is, to induce the purchase of something the customer did not have in mind and did not intend to buy or understand he was buying; namely, extra or additional photographs sold at a substantial profit. In truth and in fact, respondent's single-picture coupon offer was, and is, in reality nothing more than what is known in the industry as a "bait" or "come-on" offer employed to place the customer in a position where he must buy more pictures at greater cost in order to obtain the one already bought and paid for. From time to time, in cases where coupon customers refuse, and have refused, to purchase additional pictures, no further consideration has been given to the customer by respondent, the complaints of the customer have been ignored, no refund has been made to him, and the customer has thereby sustained the loss of the 95 cents or other sum invested in the coupon or certificate.

PAR. 6. Respondent further, trading as Kiddieland Studios, Beacon Studios, and under other trade names, has represented that a steel-gray finish photograph offered for the price of 50 cents as an "invitation

offer" sells regularly for \$2. Said offer contains the following representation:

A beautiful 7 x 10 Silvertone Portrait * * * a complete set of proofs offered with each sitting. Other photos may be ordered if desired.

The coupons printed below may be used by anyone for any type of photo. Baby pictures, adults, pictures in dancing costume, confirmation, graduation or any type of photo wanted.

Distribute the coupons to your friends * * * or save them for a later date. (Comm. Ex. 5.)

Attached to the foregoing offer were four coupons, each containing the following descriptive language:

A BEACON PHOTO
Beautifully Finished, Size 7" x 10" Vignette
LOVELY STEEL GRAY FINISH
Coupon Price 50¢ (Comm. Ex. 5)

So-called "Etchcraft portraits," selling for 50 cents each, one to a customer, have been represented as comprising a special offer, and on occasion respondent's sales representatives have represented to customers that the colored photographs sold by respondent are "paintings" and "oil paintings."

PAR. 7. By means of representations and practices heretofore referred to or described, the respondent leads and induces, and has led and induced, customers to believe that the said original coupon picture offer is, and was, a bona fide sales offer not related to or connected with or conditioned upon any other transaction or contractual arrangement; that the sittings for photographs, the return of proofs for selection, and the delivery of finished pictures would be made in good faith at the times and upon the dates specified by respondent's representatives; that the pictures to be made would be equal to and identical in character, quality, and workmanship with the samples exhibited in obtaining orders therefor and corresponding to the number ordered; that the so-called special and invitation offers are, and were, actually special and invitation or introductory offers of reduced prices made only for a limited time; and that tinted or colored pictures sold by respondent are genuine paintings or oil paintings done by hand without the use of a camera or photographic image.

PAR. 8. In truth and in fact, respondent's said coupon and certificate offers calling for a single picture are not, and have not been, made in good faith to customers but are, and have been made, for the purpose of obtaining a down payment from the customer and placing him in the position of losing said down payment unless additional pictures are, and were, ordered at higher prices, thereby enabling respondent

to make a substantial profit on the transaction. In many instances, sittings for photographs, the return of proofs, and the delivery of finished pictures are not, and have not been, made in compliance with sales representations made by respondent. Respondent's offers designated as "special" or "invitation" are not special or limited in point of time or otherwise but are, on the contrary, offers that have been made continually by respondent over a period of years and in the normal course of his business operations. Respondent's photographs, offered at 50 cents, do not sell for \$2 normally, and have never been sold for such price in the regular course of business. Respondent's pictures which have been represented to customers as paintings or oil paintings are not genuine paintings or oil paintings in the accepted meaning of such terms but, on the contrary, are merely photographs to which color has been applied by hand by the use of cotton. Photographs delivered by respondent are, and have been frequently inferior in character, quality, and workmanship to the samples used by respondent in effecting sales. This is, and has been, particularly true following the refusal of a coupon purchaser to order additional photographs. On many occasions a fewer number of photographs than those ordered and paid for have been delivered by respondent's studios. On numerous occasions since 1941, specifically during the war, the delay in furnishing finished products was due to respondent's inability to secure photographic paper in sufficient quantity and of good quality, and in some instances the inferior workmanship of the finished product was due to such inferior quality of photographic paper.

PAR. 9. Respondent further, in connection with the operation of his said photographic studio at 30 Huntington Avenue, Boston, Mass., from time to time, by arrangements made with various third parties, has permitted them to use, and they have used, as their business office, employing separate studio trade names for themselves, the actual street address and studio facilities, including telephone number of the respondent, at the same address, 30 Huntington Avenue, Boston, Mass. Said parties so using respondent's studio and street address and the said facilities existing there, actually had no studio equipment of any character there or elsewhere, and they did not own, conduct, or control any photographic studio in any accepted meaning or sense of the term. Two such alleged studios so employing respondent's business address, thereby falsely holding themselves out to the public as owners and operators of photographic studios and equipment there and obtaining credit and business standing and identity to which they were not entitled, were known respectively as Copley and Iroquois Studios. This practice of respondent in permitting others who neither

owned, operated, nor controlled a photographic studio or any equipment therefor to use his studio address and equipment as and for their own in connection with fictitious studio trade names employed by them has, and has had, the capacity and tendency to mislead members of the public into the erroneous belief, and they have been led to believe, that they were contracting and dealing with established, operating, responsible studios, and into the purchase of the products of said alleged studios because of such beliefs so engendered. Respondent further, in thus permitting others to make such use of his address and business facilities, has placed in their hands an instrument whereby they might deceive members of the consuming public into believing, and they have believed, that they were contracting and dealing with an established, operating, responsible studio, when such was not the fact. The use of the names Iroquois Studios and Copley Studios, as herein described, has been discontinued by the respondent and no such use of said names has been made, or has been permitted to be made, by the respondent since approximately the spring of 1945.

PAR. 10. The use by the respondent of the aforesaid acts, practices, and methods in connection with the offering for sale and sale of his said products in commerce, and particularly the failure of respondent to disclose essential and important facts as to the real character of the coupon or certificate offer made by him, has had, and now has, the tendency and capacity to, and does, mislead and deceive members of the purchasing public regarding the actual character and meaning of the original offer made by respondent, including the actual identity of the product offered for sale, and concerning the character, quality, value, and price of respondent's products, and leads, and has led, purchasers erroneously to believe that the said representations are, and were, true, and thereby causes, and has caused, a substantial number of the purchasing public, by reason of the erroneous beliefs so engendered, to purchase substantial quantities of such product.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the re-

spondent, certain facts and other evidence stipulated into the record at a hearing before an examiner of the Commission theretofore duly designated by it (including a stipulation that the Commission may proceed to make its findings as to the facts and order disposing of the proceeding without intervening procedure) and recommended decision by the trial examiner, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondent George D. Newman, individually and trading as Kiddieland Studios or as Beacon Studios, or under any other name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of plain, tinted, or colored photographs or enlargements thereof in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

2. Representing, through the use of coupons or otherwise, that a photograph of a designated kind and character will be made for a stipulated price, unless this is in fact done without the imposition or attempted imposition of conditions not stated when the offer is made.

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

4. Representing, directly or by implication, that a picture to be made and delivered will be equal in type, quality, or workmanship to samples displayed to the customer, unless the picture delivered is in fact equal in type, quality, or workmanship to such samples.

5. Representing that photographs will be taken, proofs exhibited, or finished pictures delivered at specified times except when such representations are made in good faith and failures to conform thereto are due to circumstances not reasonably under the control of respondent.

6. Using the words "painting" or "oil painting," or any other word or words of similar import and meaning, to designate, describe, or refer to pictures or enlargements made by a photographic process or representing in any manner that colored or tinted photographs are paintings.

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7. Aiding, assisting, or cooperating with others who do not own, conduct, or control a photographic studio in representing, implying, or holding themselves out to the purchasing public as owning, controlling, or operating a photographic studio.

It is further ordered, That the charges of the complaint concerning alleged false and misleading use of the words "gold tone" as descriptive of certain of respondent's products be, and the same hereby are, dismissed on the ground that the evidence fails to support the charges as made.

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

Complaint

IN THE MATTER OF

JACK KLEIN AND MARTIN D. FRIEDMAN, TRADING AS
FRIEDMAN-KLEIN SALES COMPANY AND WESTERN
NOVELTY COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914

Docket 5452. Complaint, July 10, 1946—Decision, July 17, 1947

Where two individuals engaged in the competitive interstate sale and distribution of belts, novelties, candy and other merchandise, including certain assortments which were so packed and assembled as to involve the use of a lottery scheme or game of chance when sold or distributed to the purchasing public, such as 6 belts and a 1,000-hole punch board for use under a plan, as thereon announced, pursuant to which the customer received for 5 cents, one of the 6 belts, or one of 20 packages of cigarettes, or nothing, dependent upon his success or failure in selecting a lucky number—

Sold such assortments, so packed and assembled, to jobbers and retailers by whom, as direct or indirect purchasers, they were exposed and sold to the purchasing public in accordance with plan involving opportunity to secure by chance said products at much less than the normal retail price thereof; and thereby

Supplied to and placed in the hands of others the means of conducting a lottery in the sale of their merchandise in accordance with such sales plans, contrary to an established public policy of the United States Government, and in competition with many who do not use sales methods contrary to public policy;

With the result that many persons were attracted by said sales plans or method and the element of chance involved therein and were thereby induced to buy and sell their said products in preference to those of such competitors, and with tendency and capacity to unfairly divert trade in commerce:

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

Before *Mr. John W. Addison*, trial examiner.

Mr. D. C. Daniel for the Commission.

Mr. Al Lebrecht, of Kansas City, Mo., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Jack Klein and Martin D. Friedman, individuals trading as Friedman-Klein Sales Co., and Western Novelty Co., hereinafter referred to as the respond-