

Complaint

48 F. T. C.

IN THE MATTER OF

HENRY J. HANDELSMAN, JR. ET AL. DOING BUSINESS AS
THE CAMERA MAN; AND HENRY J. HANDELSMAN, JR.
INC.

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

Docket 5386. Complaint, Oct. 3, 1945—Decision, July 12, 1951

Where three individuals engaged in interstate sale and distribution at retail of cameras and other merchandise, and their advertising agency, through advertisements in newspapers and magazines—

- (a) Falsely represented that their cameras were equipped with fast lenses, and would take sharp, clear pictures of persons and things in motion or still; had the appearance, performance, and durability of much higher-priced cameras; would take pictures in color with ordinary films; were nationally advertised by the manufacturers; and that a simulated leather carrying case was given free with each camera;

The facts being that the reproduction of color is a property of the color film and not the camera, and almost any camera can be used for taking color pictures; charge for the case was included in the price of the camera; and other aforesaid claims were likewise false;

- (b) Falsely represented that the prices for which they offered their cameras were special prices; and

- (c) Represented that the purchase price would be refunded immediately without question to dissatisfied customers and that the cameras were guaranteed to give a lifetime of service, notwithstanding which they failed and refused to make such refunds and to replace broken and defective cameras;

With the effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true and thereby into the purchase of a substantial number of their products:

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

Mr. Joseph Callaway for the Commission.

Mr. Joseph J. Merensky, of Chicago, Ill., and *Mr. John L. Ingoldsby, Jr.*, of Washington, D. C., 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 Henry J. Handelsman, Jr., Birdye Handelsman and William Handelsman, individually and as copartners, trading and doing business as The Camera Man and Henry J. Handelsman, Jr., Inc., a corporation, hereinafter re-

ferred 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. Respondents Henry J. Handelsman, Jr., Birdye Handelsman and William Handelsman, are individuals, whose address is 139 North Clark Street, Chicago, Ill. Respondent Henry J. Handelsman, Jr., Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business at 139 North Clark Street, Chicago, Ill.

PAR. 2. Respondent Henry J. Handelsman, Jr., individually, for more than 1 year prior to January 17, 1943, was, and respondents Henry J. Handelsman, Jr., Birdye Handelsman and William Handelsman, as copartners, are now, and for more than 2 years last past have been, engaged in the retail sale and distribution of cameras and other articles of merchandise under the trade name of The Camera Man.

In the course and conduct of their said business, the respondents cause said cameras and other merchandise, when sold, to be transported from their place of business in the State of Illinois, to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said cameras and other merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. The respondent Henry J. Handelsman, Jr., Inc., is now, and for more than 3 years last past has been, conducting an advertising agency and as such engaged in formulating, editing, testing, selling advertising matter and advising its clients in regard thereto. Said corporate respondent prepared and placed for the individual respondents the advertising representations hereinafter mentioned.

PAR. 4. The respondents act, and at all times mentioned herein have acted, in conjunction and cooperation with one another in performance of the acts and practices hereinafter alleged.

PAR. 5. In the course and conduct of the business of the individual respondent, Henry J. Handelsman, Jr., and of the said partnership, and for the purpose of inducing the purchase of their cameras in commerce, the respondents have made and are now making certain false, deceptive, and misleading statements and representations in regard to their said cameras through the medium of radio broadcasts, by means of advertisements inserted in newspapers and magazines circulated generally among the purchasing public, and in various other ways. Typical representations are as follows:

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Nationally advertised Photo Master candid camera.

Extremely fast lens.

It's equipped with a high speed lens.

Takes 16 sharp, clear pictures indoors or out—in action or “stills”.

If you act quickly you will also receive a smart simulated leather carrying case with arm sling absolutely free! As a gift.

Positively \$5.00—appearance—performance and durability, all for only \$1.00.

This is the only \$1.00 camera and carrying case of this high quality being offered anywhere. However, the supply is limited. You must act now if you want to take advantage of this special offer.

Nationally radio advertised Metro-Cam color candid camera.

Sensational color camera.

Takes full color pictures.

Positively \$10.00—appearance—performance and durability, all for only \$3.98.

PAR. 6. Through the use of the term “candid camera” and the foregoing statements and representations and others similar, not specifically set out herein, the respondents have represented, and are now representing that their cameras are equipped with fast lenses; that they take sharp, clear pictures of persons and things in motion or still; that they are nationally advertised by the manufacturers; that a simulated leather carrying case is given free with each camera; that their cameras have the appearance, performance, and durability of much higher priced cameras; that the prices for which respondents offer their cameras are special prices; that their cameras will take pictures in color with the use of ordinary films.

PAR. 7. The foregoing representations are false, deceptive, and misleading in the following respects:

Respondents' cameras are not equipped with fast lenses. They will not take sharp, clear pictures of persons or things either in motion or still because of the kind of lenses with which they are equipped. The manufacturers of respondents' cameras do not now, nor have they ever advertised them nationally over the radio or otherwise. The carrying case is not given free with purchase of a camera. Its cost is included in the price of the camera. The cameras have neither the appearance, performance, nor durability of higher priced cameras. The prices for which respondents have offered and now offer these cameras for sale are not special prices. On the contrary, these cameras and camera cases were and are regularly offered for sale, when available, at these prices by the respondents and by others. All of respondents' cameras are identical in construction. No camera will take color pictures without the use of special films treated so as to reproduce color pictures. The reproduction of actual color is a property of the color film and not the camera. Color films are now made in such form that almost any camera can be used for taking color pictures.

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PAR. 8. In addition to the false and misleading representations mentioned above, the respondents have failed and refused to make refunds to dissatisfied customers and failed and refused to replace broken and defective cameras after having advertised that the purchase price would be refunded immediately without question to dissatisfied customers and that the cameras were guaranteed to give a lifetime of service.

PAR. 9. The use by the respondents of the foregoing false, deceptive and misleading statements and representations disseminated as aforesaid in connection with the offering for sale and sale of their cameras in commerce has had, and now has, the capacity and the tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and into the purchase of substantial numbers of such cameras in commerce because of such erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of the respondents are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, MODIFIED FINDINGS AS TO THE FACTS AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 3, 1945, issued and thereafter served its complaint in this proceeding upon the respondents, Henry J. Handelsman, Jr., Birdye Handelsman, and William Handelsman, individuals, and Henry J. Handelsman, Jr., Inc., a corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On November 19, 1945, the respondents filed their answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by counsel for the respondents and Richard P. Whiteley, Assistant Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, might be taken as the facts in this proceeding in lieu of testimony in support of or in opposition to the charges stated in the complaint, and that the Commission might proceed upon said complaint, the answer of respondents, and said statement of facts to make its report stating its findings as to the facts (including inferences which might be drawn from said stipulated facts) and its conclusion based thereon, and enter its order disposing of the proceeding without the filing of a report upon the evidence by the trial examiner, the presentation of argument, or the filing of briefs. Thereafter,

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this proceeding regularly came on for final hearing before the Commission on said complaint, the answer of respondents, and the stipulation, said stipulation having been approved, accepted, and filed by the Commission; and the Commission, having duly considered the matter, made and issued on June 7, 1946, its findings as to the facts and its conclusion drawn therefrom, and its order to cease and desist disposing of said proceeding.

Thereafter, this matter came on for reconsideration by the Commission upon a motion by Daniel J. Murphy, Chief, Division of Litigation, to reopen this proceeding for the purpose of modifying the findings as to the facts and order to cease and desist issued herein, and the answer of respondent Henry J. Handelsman, Jr., stating that he had no objection to said motion (no answer having been filed by the other respondents in response to a notice of said motion served on each said respondent by the Commission together with leave to show cause why the action requested in said motion should not be taken); and the Commission, having reconsidered the matter and being of the opinion that the aforesaid findings as to the facts, conclusion, and order to cease and desist should be modified in certain respects, reopened the proceeding, and said findings, conclusion, and order were set aside. In lieu of said findings as to the facts and conclusions, the Commission now makes this its modified findings as to the facts and its conclusion drawn therefrom.

MODIFIED FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Henry J. Handelsman, Jr., Birdye Handelsman, and William Handelsman are individuals whose address is 139 North Clark Street, Chicago, Ill. Respondent Henry J. Handelsman, Jr., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business at 139 North Clark Street, Chicago, Ill. Respondent Henry J. Handelsman, Jr., individually, for more than 1 year prior to January 17, 1943, was engaged, and respondents Henry J. Handelsman, Jr., Birdye Handelsman, and William Handelsman during the years 1944, 1945, and 1946 were engaged, as copartners in the retail sale and distribution of cameras and other articles of merchandise, under the trade name of The Camera Man.

PAR. 2. In the course and conduct of their aforesaid business, respondents caused their cameras and other merchandise, when sold, to be transported from their place of business in the State of Illinois to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents at all times mentioned herein have maintained a course of trade in said

cameras and other merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent Henry J. Handelsman, Jr., Inc., during the years 1943 through 1946 conducted an advertising agency, and as such engaged in formulating, editing, testing, and selling advertising matter, and advising its clients in regard thereto. Said corporate respondent prepared and placed for the individual respondents the advertising representations hereinafter mentioned.

PAR. 4. At all times mentioned herein the several respondents have acted in conjunction and cooperation with one another in performance of the acts and practices hereinafter described.

PAR. 5. In the course and conduct of the business of the individual respondent Henry J. Handelsman, Jr., and of the said partnership, and for the purpose of inducing the purchase of their cameras in commerce, the respondents have made certain false, deceptive, and misleading statements and representations in regard to their said cameras through the medium of radio broadcasts, by means of advertisements inserted in newspapers and magazines circulated generally among the purchasing public, and in various other ways. Typical representations are as follows:

Nationally advertised Photo Master candid camera.

* * * * *

Extremely fast lens.

* * * * *

It's equipped with a high speed lens.

* * * * *

Takes 16 sharp, clear pictures indoors or out—in action or “stills.”

* * * * *

If you act quickly you will also receive a smart simulated leather carrying case with arm sling absolutely free! As a gift.

* * * * *

Positively \$5.00—appearance—performance and durability, all for only \$1.00.

* * * * *

This is the only \$1.00 camera and carrying case of this high quality being offered anywhere. However, the supply is limited. You must act now if you want to take advantage of this special offer.

* * * * *

Nationally radio advertised Metro-Cam color candid camera.

* * * * *

Sensational color camera.

* * * * *

Takes full color pictures.

* * * * *

Positively \$10.00—appearance—performance and durability, all for only \$3.98.

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PAR. 6. Through the use of the foregoing statements and representations and others similar thereto but not specifically set out herein, the respondents have represented that their cameras were equipped with fast lenses; that they would take sharp, clear pictures of persons and things in motion or still; that they were nationally advertised by the manufacturers; that a simulated-leather carrying case was given free with each camera; that their cameras had the appearance, performance, and durability of much higher priced cameras; that the prices for which respondents offered their cameras were special prices; and that their cameras would take pictures in color with the use of ordinary films.

PAR. 7. The aforesaid representations were false, misleading, and deceptive. Respondents' cameras were not equipped with fast lenses. They would not take sharp, clear pictures of persons or things, either in motion or still, because of the kind of lenses with which they were equipped. The manufacturers of respondents' cameras do not now advertise, nor have they ever advertised them nationally over the radio or otherwise. The carrying case was not given free with purchase of a camera; its cost was included in the price of the camera. The cameras have neither the appearance, performance, nor durability of higher priced cameras. The prices for which respondents have offered these cameras for sale were not special prices. On the contrary, these cameras and camera cases were regularly offered for sale, when available, at these prices by the respondents and by others. All of respondents' cameras were identical in construction. No camera will take color pictures without the use of special films treated so as to reproduce color pictures. The reproduction of actual color is a property of the color film and not the camera. Color films are now made in such form that almost any camera can be used for taking color pictures.

PAR. 8. In addition to the false, misleading, and deceptive representations mentioned above, the respondents have failed and refused to make refunds to dissatisfied customers, and failed and refused to replace broken and defective cameras after having advertised that the purchase price would be refunded immediately without question to dissatisfied customers and that the cameras were guaranteed to give a lifetime of service.

PAR. 9. The use by the respondents of the aforesaid false, misleading, and deceptive statements and representations, disseminated as aforesaid in connection with the offering for sale and sale of their cameras in commerce, has had the capacity and the tendency to, and did, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and rep-

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representations were true, and, because of such erroneous and mistaken belief, into the purchase of substantial numbers of such cameras in commerce.

CONCLUSION

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

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, and a stipulation as to the facts entered into between counsel for the respondents herein and Richard P. Whiteley, Assistant Chief Counsel for the Commission, which stipulation provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon the respondents herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding; and

The Commission, after having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act, on June 7, 1946, issued and subsequently served upon the respondents said findings as to the facts, conclusion, and its order to cease and desist; and

This proceeding having been reopened and said findings as to the facts, conclusion, and order to cease and desist having been set aside; and the Commission having made its modified 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 individual respondents, Henry J. Handelsman, Jr., Birdye Handelsman, and William Handelsman, jointly or severally, their representatives, agents, and employees, and Henry J. Handelsman, Jr., Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of cameras or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or by implication:

- (a) That cameras which are not equipped with fast lenses are so equipped.

(b) That cameras which will not take sharp, clear pictures of things or persons in motion or still will take such pictures.

(c) That cameras not nationally advertised are so advertised.

(d) That any article the cost of which is included in the purchase price of other merchandise in connection with which such article is offered is given free.

(e) That cameras which do not have the appearance, performance, or durability of higher priced cameras have such appearance, performance, or durability.

(f) That cameras or other articles of merchandise are being offered at a reduced or special price, when in fact such price is not lower than respondents' usual and customary price for such merchandise.

(g) That cameras will take color pictures, without revealing that the reproduction of actual color is a property of the film and not of the camera.

2. Representing that refunds will be made to dissatisfied customers unless such refunds are in fact made.

3. Representing that cameras are guaranteed to give a lifetime of service unless cameras broken because of defective materials or workmanship are replaced by respondents.

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IN THE MATTER OF

HAROLD EISENBERG AND SAM EISENBERG DOING
BUSINESS AS PLYMOUTH TEXTILES

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

Docket 5869. Complaint, Apr. 4, 1951—Decision, July 12, 1951

Where two partners engaged in conducting a mail-order business in the interstate sale of remnants and patches of cloth to the general public; in advertising in newspapers and periodicals and otherwise—

- (a) Misleadingly and erroneously represented that assortments of cloth included pieces of sufficient size to be made into aprons and children's sun suits, through such statements as "Ideal for aprons, children's sun suits, patchwork quilts," etc.; when in fact only one piece of cloth in the assortment was of such size and the remainder consisted of scraps, trimmings, and small irregular pieces; and
- (b) Represented that thread and a buttonhole maker were furnished to purchasers of the assortments without cost or obligation of any nature, through such statements as "FREE 100 yds. Thread VALUE FREE! With your First Order * * * Amazing New Button Hole Maker x x all this free to introduce our BIG PATCH and REMNANT assortment," etc.;

The facts being that the cost of such articles was included in the charge for the assortment and the only instances in which the articles were furnished without cost were those in which the other merchandise, namely, the remnants and patches, was returned by the purchaser;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to their merchandise and the articles purportedly offered without cost, and thereby cause it to purchase their products:

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. William L. Pack*, trial examiner.

Mr. Morton Nesmith and *Mr. John C. Williams* for the Commission.

Mr. Sidney H. Asch, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Harold Eisenberg and Sam Eisenberg, copartners, doing business as Plymouth Textiles, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows: