

IN THE MATTER OF
ARNOLD A. SALTZMAN AND IRVING SALTZMAN TRADING
AS PREMIER KNITTING COMPANY

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

Docket 4659. Complaint, Dec. 15, 1941—Decision, July 20, 1951

The term "Shetland" has long been applied to a particular type of wool fiber taken from the fleece of Shetland sheep raised on the Shetland Islands or on the adjacent mainland of Scotland, and has long been well and favorably known to the purchasing public, and, when used to designate or describe a product made of yarns having the general appearance of wool fibers, is understood by it as denoting a product made entirely from the fleece of the aforesaid sheep.

The words "Angora Wool" have long been applied to particular types of wool fiber taken from the hair of the Angora goat and are well and favorably known to the purchasing public.

The term "Gora" is a contraction of "Angora" and, even though combined with the coined word "Kittn," implies to the purchasing public that products so labeled and designated are made of yarns composed entirely of the hair of the Angora goat or its young.

Where two individuals engaged in the interstate sale and distribution of sweaters—

- (a) Made use of the term "Imported Shetland" on labels of certain sweaters which were knitted from yarn spun of wool from African Merino sheep; and
- (b) Made use of the trade name "Kittn-Gora" on the labels of sweaters knitted from yarn composed of 50 percent lambs wool and 50 percent hair of young Angora goats;

With tendency and capacity to mislead and deceive a substantial portion of the public with respect to their said products and thereby cause its purchase thereof:

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.

As respects respondents' contention that the allegations of the complaint as to their use of the term "Imported Shetland" should be dismissed because the yarn concerned was purchased by them from a reputable company which so represented it, and also because they discontinued such markings in 1942:

The Commission was of the opinion from the facts of record that because of the appearance and price of the yarn respondents knew or should have known that it was not made of genuine Shetland wool; and,

It appearing further that respondents believed that the term might properly be applied to wool of that type, even though the sheep were raised in other localities, and that they discontinued the use of the term only after the issuance of the complaint, and so as to comply with the Commission's interpretation of the term as there shown:

Complaint

The Commission was of the opinion that there was not sufficient assurance that respondents would not reinstitute the practice if the allegations of the complaint relating thereto were dismissed.

As regards the charge that respondents represented through use of the trade name "Premier Knitting Company" that they were the owners of and conducted a factory in which their products were manufactured; that they did not own, operate or control the factory; and that members of the purchasing public prefer to buy merchandise directly from the manufacturer in the belief that by doing so a more uniform line of goods, superior quality, lower price and other advantages can be obtained;

It appearing that while they did not own such a mill, they did control completely the manufacture of their products, which were made to rigid specifications under their own supervision; that they furnished the raw materials, set the machines to produce the style of garment desired, and actually employed and paid the operators of the machines; that under agreements with the owner of the mills the entire output of the machines thus operated belonged to respondents upon their payment of a specified amount per piece knitted; and that they represented that they were manufacturers only through their use of said trade name:

The Commission was of the opinion that they exercised sufficient control over the knitting of their products to occupy the same relationship to their purchasers as respects their ability to furnish uniformity of quality in their products as they would if they owned a knitting mill; that the record did not show that through their use of said trade name or otherwise they represented that a lower price could be obtained from them because they were manufacturers; and,

Accordingly, was of the opinion and found that the allegations of the complaint with respect to the unfair and deceptive nature of their use of the name "Premier Knitting Company" were not sustained by the greater weight of the evidence.

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

Mr. R. A. McQuat and *Mr. Jesse D. Kash* for the Commission.

Rothstein & Korzenik, 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 Arnold A. Saltzman and Irving Saltzman, individually and trading as Premier Knitting Co. 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. The respondents, Arnold A. Saltzman and Irving Saltzman, are individuals trading as Premier Knitting Co., with their principal place of business located at 1410 Broadway in the city of New York, State of New York.

Complaint

48 F. T. C.

PAR. 2. Respondents are now and for more than 1 year last past have been engaged in the sale and distribution of various kinds and types of sweaters. Respondents cause their said products, when sold, to be transported from their place of business in the State of New York to the purchasers thereof at their respective points of location in the 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 their said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business, and for the purpose of inducing the purchase of their said products, the respondents have engaged in the practice of falsely representing the constituent fiber or material of which their products are made, and the nature of their business, such false representations being made by means of statements appearing on labels attached to their said products and in other printed and written material which they have distributed among customers and prospective customers located in the various States of the United States and in the District of Columbia.

Typical of the aforesaid practices is the use by the respondents of the words "Imported Shetland" on labels attached to certain of their sweaters, which sweaters are not made of yarns composed entirely of wool fibers taken from the fleece of Shetland sheep, but, on the contrary, contain only approximately 5 percent of Shetland wool and approximately 95 percent of other wools.

The word "Shetland" has long been applied to a particular type of wool fiber taken from the fleece of Shetland sheep raised on the Shetland Islands or on the adjacent mainland of Scotland and has for a long time been well favorably known to the purchasing public. The word "Shetland," when used to designate or describe a product made of yarns having the general appearance of wool fibers, is understood by the purchasing public as denoting a product made entirely from the fleece of the aforesaid Shetland sheep.

A further example of respondents' practices is the use of the words "Kittn-Gora" on labels attached to certain of their sweaters, which sweaters are not made of yarns composed of wool fibers taken from the hair of the Angora goat, but, on the contrary, are composed of rabbit hair and wool other than Angora.

The term "Gora" is a contraction of "Angora" and even though combined with the coined word "Kittn" implies that the sweaters so labeled and designated are made of yarn composed entirely of the hair of the Angora goat. The word "Angora" has long been applied to a particular type of wool fiber taken from the hair of the Angora

goat and has for a long time been well and favorably known to the purchasing public. When such term, or a simulation or contraction thereof, is used to designate or describe a product made of yarns having the appearance of wool fibers, such term is understood by the purchasing public as denoting a product made entirely from the hair of the Angora goat.

PAR. 4. The respondents have also misrepresented the nature of their business by using the trade name "Premier Knitting Company" on their letterheads, thereby representing that they are the owners of and conduct a factory in which their said sweaters are manufactured. In truth and in fact, respondents do not own, operate or control, a plant or factory for the manufacture of their products but their said sweaters are knitted for them by independent contractors.

PAR. 5. Members of the purchasing public have a preference for buying merchandise, including the products sold by respondents, directly from the manufacturer thereof, believing that by so doing, a more uniform line of goods, superior quality, lower prices, and other advantages can be obtained.

PAR. 6. The use by the respondents of the foregoing acts and practices has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true, and that respondents truthfully represent the constituent fiber and material of which their products are made as well as the nature of their business. As a result of such erroneous and mistaken belief, engendered as herein set forth, the purchasing public has been induced to purchase, and has purchased, substantial quantities of respondents' products.

PAR. 7. The aforesaid acts and practices of the respondents, as herein alleged, 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, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on December 15, 1941, issued and subsequently served its complaint in this proceeding upon the respondents, Arnold A. Saltzman and Irving Saltzman, individually and trading as Premier Knitting Co., charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of respondents' answer, testimony and other evidence in support of and in opposition

Findings

48 F. T. C.

to the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the aforesaid complaint, the respondents' answer thereto, the testimony and other evidence, the recommended decision of the trial examiner and exceptions thereto by counsel for respondents, and briefs and oral argument of counsel; and the Commission, having duly considered the matter and having entered its order ruling on the exceptions to the recommended decision of the trial examiner, 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 conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Arnold A. Saltzman and Irving Saltzman, are individuals trading as Premier Knitting Company, with their principal place of business at 1410 Broadway in the city of New York, State of New York.

PAR. 2. Respondents at all times mentioned in the complaint have been engaged in the sale and distribution of various kinds and types of sweaters. Respondents cause their said products, when sold, to be transported from their place of business in the State of New York to the purchasers thereof located in various States of the United States and in the District of Columbia. Respondents maintain and at all times mentioned in the complaint have maintained a course of trade in the said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business and for the purpose of inducing the purchase of their said products the respondents for many years prior to and including the year 1942 have used the term "Imported Shetland" in connection with certain of their said products and for many years have been and are now using the trade name "Kittn-Gora" in connection with certain other of their said products, said terms appearing on labels attached to the said products distributed by respondents to their customers located in the various States of the United States and in the District of Columbia.

The word "Shetland" has long been applied to a particular type of wool fiber taken from the fleece of Shetland sheep raised on the Shetland Islands or on the adjacent mainland of Scotland and has for a long time been well and favorably known to the purchasing public. The word "Shetland," when used to designate or describe a

product made of yarns having the general appearance of wool fibers, is understood by the purchasing public as denoting a product made entirely from the fleece of the aforesaid Shetland sheep.

The term "Gora" is a contraction of "Angora" and, even though combined with the coined word "Kittn," implies to the purchasing public that products so labeled and designated are made of yarn composed entirely of the hair of the Angora goat or its young. The words "Angora wool" have long been applied to a particular type of wool fiber taken from the hair of the Angora goat that is well and favorably known to the purchasing public.

PAR. 4. Respondents' products which were labeled as "Imported Shetland" were knitted from yarn spun of wool from African Merino sheep. Respondents' products which are labeled "Kittn-Gora" are knitted from yarn which is composed of 50 percent lamb's wool and 50 percent hair of young Angora goats.

PAR. 5. Respondents contend that the allegations of the complaint relating to their use of the term "Imported Shetland" should be dismissed because the yarn from which the products so marked were knitted was purchased by them from a reputable company which represented the yarn as being "Imported Shetland," and also because they discontinued this marking in 1942. The Commission is of the opinion from the facts of record, however, that because of the appearance and price of the yarn, the respondents knew or should have known that it was not yarn made of genuine Shetland wool. Also it is clear from the record: that respondents believe that the term "Imported Shetland" may properly be applied to wool of that type of sheep raised in the Shetland Islands even if raised in other localities; that they discontinued the use of this term only after the issuance of the complaint in this proceeding; and that they discontinued its use so as to comply with the Commission's interpretation of this term as shown by this complaint. Upon this record the Commission is of the opinion that there is not sufficient assurance that respondents would not reinstitute this practice if the allegations of the complaint relating thereto were dismissed.

PAR. 6. The complaint in this procedure further alleges: That respondents, by using the trade name "Premier Knitting Company," have represented that they are the owners of and conduct a factory in which their products are manufactured; that respondents do not own, operate or control a factory; and that members of the purchasing public have a preference for buying merchandise directly from the manufacturer thereof, believing that by so doing a more uniform line of goods, superior quality, lower prices and other advantages can be obtained. The record shows that, while respondents do not own a

Order

48 F. T. C.

knitting mill, they do control completely the manufacturing of their products, which are made to rigid specifications under their own supervision. Respondents furnish the raw materials, set the machines to produce the style of garment desired, and actually employ and pay the persons operating the machines. Under agreements with the owners of the knitting mills, the entire output of the machines so operated belongs to respondents upon their payment of a specified amount per piece knitted. Respondents have represented that they were manufacturers only through their use of the trade name Premier Knitting Co. Upon this record the Commission is of the opinion that respondents exercise sufficient control over the knitting of their products to occupy the same relationship to their purchasers with respect to ability to furnish uniformity of quality in their products as they would if they owned a knitting mill. The Commission is further of the opinion that the record does not show that respondents, through their use of the trade name Premier Knitting Co. or otherwise, have represented that lower prices could be obtained from them because they were manufacturers. Therefore, the Commission is of the opinion, and finds, that the allegations of the complaint with respect to the unfair and deceptive nature of respondents' use of the name "Premier Knitting Company" are not sustained by the greater weight of the evidence.

PAR. 7. The use by the respondents of the false, misleading and deceptive statements and representations referred to in paragraphs 3 to 5, inclusive, has had the tendency and capacity to mislead and deceive a substantial portion of the public with respect to respondents' products, and has had the tendency and capacity to cause such portion of the public to purchase said products as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

The acts and practices of the respondents as herein found (excluding those referred to in par. 6) 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 respondents' answer thereto, testimony and other evidence in support of and in opposition to the allegations of the complaint introduced before a trial examiner of the Commission theretofore duly designated by it, the trial

examiner's recommended decision and exceptions thereto by counsel for respondents, and briefs and oral argument of counsel, and the Commission having ruled on the exceptions to the trial examiner's recommended decision and having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents, Arnold A. Saltzman and Irving Saltzman, individually and trading under the name of Premier Knitting Company, or trading under any other name, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of sweaters or other knitwear in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Shetland," or any simulation thereof, either alone or in connection with other words, to designate, describe, or refer to any product which is not composed entirely of wool of Shetland sheep raised on the Shetland Islands or the contiguous mainland of Scotland: *Provided, however*, That in the case of a product composed in part of wool of Shetland sheep and in part of other fibers or materials, such word may be used as descriptive of the Shetland wool content if there are used in immediate connection therewith, in letters of at least equal conspicuousness, words truthfully describing such other constituent fibers or materials.

2. Using the term "Kittn-Gora" or the word "Angora," or any simulation thereof, either alone or in connection with other words, to designate, describe or refer to any product which is not composed entirely of hair of the Angora goat: *Provided, however*, That in the case of a product composed in part of hair of the Angora goat and in part of other fibers or materials, such term or word may be used as descriptive of the Angora fiber content if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully describing such other constituent fibers or materials.

It is further ordered, That the respondents shall, within sixty (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 it.

IN THE MATTER OF

LEROY MILLER TRADING AS MASTER COPYING STUDIO;
AND BERNARD ROBINSONCOMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5668. Complaint, June 22, 1949—Decision, July 20, 1951*

Where an individual engaged in the solicitation and interstate sale and distribution of colored photographic enlargements and of frames therefor with glass, for a charge of \$3.98, with \$1 down, and balance payable on delivery, and in issuing upon receipt of the order, with initial payment and picture to be enlarged, a "certificate" which described the proposed enlargement and stated that "this order cannot be cancelled because we ask you for the right subject in the beginning"—

- (a) Displayed good samples of colored enlargements to prospective purchasers in their homes and assured them that from any small print "we make you this nice picture * * * exactly like this picture * * *";

The facts being that his colored enlargements were by no means comparable in workmanship, photographic quality, or finish with his selling samples; were not even good reproductions of the original; and colored enlargements of the same size but of better quality and workmanship were available to the public at various photo-finishing studios and stores for substantially less;

With effect of deceiving prospective purchasers into accepting his proposition, with its noncancelable order and initial payment, under the erroneous belief that such representations were true, and with capacity and tendency so to do;

- (b) Represented falsely that the pictures would be colored in oil, through oral statements in his solicitations to purchasers, of whom a substantial number bought his enlargements in said definite impression or belief, notwithstanding the inclusion of a clause "finished in colors or sepia (not oil)" in the certificate given the purchaser;

- (c) At various times, directly or by inference, represented falsely to prospective purchasers that the glass in the picture frames sold by him was "unbreakable";

- (d) Failed to reveal, in soliciting the order—in which the certificate given the customer stated, "Octagon style (convex) * * * \$3.98 (without frame) * * * We handle a large selection of Frames suitable for these portraits. However, you are not obligated to order frame * * *. This order cannot be cancelled"—that no frame ordinarily available at stores would be "suitable," and, upon delivery of the enlargement, for the first time directed the buyer's attention to the kind of frame required, purchase of which he solicited at prices varying from \$6.90 to \$12.90, according to material and finish;

With the result that through such bait merchandising and unfair trade practice involved in withholding or concealment of needful information, purchasers intending to use a store frame were impelled to buy something which they did not anticipate and which cost more than the picture itself:

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.

While it appeared that during two brief periods of about a week each, respondent in his house-to-house canvassing employed a scheme to arouse the prospective customer's interest by having her draw one of several envelopes in his hand and then, regardless of the selection, informed her that she was "lucky" and thus entitled to a colored enlargement at a cost or at a reduced price; said practice was voluntarily abandoned prior to the Commission's first contact with said respondent through its investigators, and in the absence of any resumption thereof, the public interest did not appear to call for corrective action in the matter in the present proceeding.

As respects other charges of the complaint, including alleged false representations that the finished enlargement would have a value as high as \$15, that respondents employed geniuses, Negroes, females, and cripples in connection with their business, and that when a customer refused to buy a frame respondents stated the deal was at a special price, and they would not deliver the enlargement or redeliver the original photograph unless a frame was purchased: probative evidence was lacking to sustain the same.

As respects the charges in the complaint that respondent Robinson, as a sales agent for respondent Miller, participated in the acts, practices, and policies set forth in the complaint: no evidence was introduced to show that he ever actually so participated and complaint was dismissed insofar as it related to him.

Before *Mr. Clyde M. Hadley*, trial examiner.

Mr. William L. Taggart for the Commission.

Mr. John Edward Sheridan, of Philadelphia, Pa., 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 Leroy Miller, trading as Master Copying Studio, and Bernard Robinson, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Leroy Miller, trading as Master Copying Studio, has been and now is engaged in the business of soliciting the sale of and the sale and distribution of colored photographic enlargements together with frames and glasses therefor. His place of business is located at 2433 Kensington Ave., Philadelphia, Pa. Respondent Bernard Robinson is the agent of the said Leroy Miller and as such agent has been and now is engaged in the business of soliciting the sale, on behalf of his principal, of colored photographic enlargements.

Complaint

48 F. T. C.

together with frames and glasses therefor. His address is 2250 North Gratz Street, Philadelphia, Pa.

PAR. 2. In the course and conduct of the business conducted under the name of Master Copying Studio, respondent Leroy Miller causes and at all times mentioned herein has caused said products sold by him to be transported from the State of Pennsylvania to purchasers thereof located in the various other States of the United States. This respondent maintains and at all times mentioned herein has maintained a course of trade in said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondents, in soliciting the sale of the aforesaid products, call upon prospective purchasers in their homes and have adopted and use a sales plan or method which is as follows:

(a) In approaching a prospective customer, respondents exhibit several small envelopes and urge the prospective customer to select an envelope stating that if he is lucky he will receive a photographic enlargement colored in oil of any photograph which he may desire, either free or at a great reduction from the usual price. Prospects are sometimes informed that the finished enlargement will have a value as high as \$15.

(b) If the prospect agrees to have an enlargement made and submits a photograph for such purpose, respondents state that a small charge of \$3.95 is made for the oils and other materials used. If this is agreeable, all or a part of said sum is collected and a certificate is filled out and delivered. This certificate lists the total charge, the amount paid and the balance due. The certificate is in the following form:

READ THIS CERTIFICATE
MASTER COPYING STUDIO

Registered under the State Laws of Pa.

2433 Kensington Ave., Phila., Pa.

This Certificate entitles

M _____

To one reproduction of subject given to our representative to be finished in colors or sepia (not oil) Rectangular style (convex) 10 x 16 inches in size UNFRAMED at the cost of \$3.95 for the purpose of advertising and extending our business.

Charge of \$1.00 Extra for Regrouping Extra Heads.

Our representative will call in a short time to show the Black and White print of the subject, and will at this time display our large assortment of finished portraits in the very latest design for your selection of colors and background, at which time

Complaint

THE COST OF \$3.95 MUST BE PAID.

We Carry a Large Selection of Frames

No verbal agreement or changes other than herein stated shall be recognized.
Deposits paid our agents will be credited below :

DEPOSIT----- BALANCE when print is shown-----
Represented by-----

This order positively cannot be countermanded.

(c) After the enlargement of the photograph is made, it is taken to the customer by one of the respondents in an uncolored condition and the customer is asked to designate the colors in which he wishes it to be finished. In this connection respondents exhibit several framed pictures artistically colored and state that the enlargement will be comparable to those shown and that many artists consisting of geniuses, Negroes, females, and cripples are employed by the company. When the information as to color is obtained, request is made for the payment of the balance due, if any, for the enlargement. Upon the completion of this transaction, the matter of a frame for the enlargement is first mentioned, samples of frames are exhibited and the customer is told that the enlargement is useless without a frame. It is further stated and pointed out by respondents at this time that the enlargement is convex in shape and for this reason it would be difficult, if not impossible, for the customer to obtain a frame and glass in which the enlargement would fit from any source other than respondents, since most stores do not sell frames and glasses of the size and shape required for such a picture, and respondents at this time solicit the sale of a frame and a glass for said enlargement. In this connection the representation is made that the glass is unbreakable. In some instances when a customer refuses to buy a frame, respondents state that the deal is at a special price and that they will not deliver the enlargement or redeliver the original photograph unless a frame is purchased.

(d) When a frame is purchased, a down payment is secured and afterwards the framed colored enlargement is delivered and the balance due for the frame and glass is collected.

PAR. 4. The sales plan used by the respondents and the representations made in connection therewith constitute misleading and deceptive acts and practices in the following particulars: No matter which envelope is drawn by the prospective purchaser, he is always told that it is a lucky number. The colored enlargement is not given free or at a reduced or special price and the sum of \$3.95 is not the cost of the oils and other materials. On the contrary, said sum is the usual and customary price charged to all persons for the colored enlarge-

ment. The sum of \$15 is greatly in excess of the reasonable value of the colored enlargement. The enlargements are not colored in oil and while the certificate so states, the customer does not receive the certificate until he has agreed to purchase the colored enlargement and has made the payment of \$3.95 or a substantial portion thereof. Respondents at the time of soliciting the sale of the enlargement do not inform the customer that it will be of an odd convex shape and that a frame and glass in which it will fit can only be secured from them but postpone the disclosure of such fact until the enlargement has been purchased and paid for. Respondents do not employ geniuses, Negroes, females, and cripples in connection with their business, the enlargements being purchased from others on a contract basis and only one person is employed for the purpose of coloring the pictures. The finished colored enlargements do not compare in quality and artistry to those exhibited as samples but are greatly inferior thereto. The glass for the frames is not unbreakable. The practices of refusing to deliver the colored enlargement and the original photograph unless a frame is purchased constitutes an unfair act and practice. In truth and in fact, the entire scheme and plan and the statements and representations used by the respondents in connection therewith is designed and put into operation for the purpose of selling picture frames and glasses therefor at a handsome profit to the respondent Leroy Miller, instead of the sale of the enlargements as customers are led to believe in which transactions the said Leroy Miller makes no profit but actually suffers a financial loss.

PAR. 5. The use by the respondents of the aforesaid plan, acts, practices, and methods in connection with the offering for sale and sale of said products in commerce, as aforesaid, including the failure to reveal essential and important facts in connection therewith, has had, and now has, the tendency and capacity to, and does mislead and deceive the purchasing public concerning the actual character and purpose of the original offer made by respondents, including the identity of the actual product respondents propose to sell and concerning the quality, value, and usual selling price of said enlargements. The aforesaid acts and practices have led, and do lead, purchasers erroneously to believe that the representations so made and used by the respondents and the implications arising therefrom are true, and cause and have caused a substantial number of the purchasing public to purchase substantial quantities of said products.

The aforesaid acts and practices of respondents, as herein alleged, 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.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated July 20, 1951, the initial decision in the instant matter of trial examiner Clyde M. Hadley, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY CLYDE M. HADLEY, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 22, 1949, issued and subsequently served upon the respondents named in the caption hereof its complaint in this proceeding, charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the filing of respondents' answer to said complaint, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before the above-named trial examiner theretofore duly designated by the Commission, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by said trial examiner on the complaint, the answer thereto, testimony and other evidence, and oral argument by counsel, proposed findings and conclusions having been waived by both counsel; and said trial examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusions drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Leroy Miller, trading as Master Copying Studio, has been and now is engaged in the business of soliciting the sale of and the sale and distribution of colored photographic enlargements and of frames therefor with glass. His place of business is located at 2433 Kensington Avenue, Philadelphia, Pa.

In the course and conduct of his business, under the name of Master Copying Studio, said respondent causes, and at all times mentioned herein has caused, such products sold by him to be transported from the State of Pennsylvania to purchasers thereof located in other States of the United States; maintaining a course of trade in said products between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent Miller, in soliciting the sale of his aforesaid products, calls upon prospective purchasers in their homes, making oral representations with respect thereto. In connection with his oral

Findings

48 F. T. C.

presentations, he displays good samples of colored enlargements, and assures the prospective customer that from any small print "we make you this nice picture * * * we will make it exactly like this picture, and we show them the sample * * * we tell them that the picture is going to be finished like this." His charge for the colored reproduction, according to the sample, is \$3.98, with \$1 down and balance payable on delivery. Upon receiving the order, with initial payment and the picture to be enlarged, he issues what is designated a certificate, describing the proposed enlargement and stating that "This order cannot be cancelled because we ask you for the right subject in the beginning."

Although a clause, "finished in colors or sepia (not oil)," appears in such certificate given to the purchaser, a substantial number of persons have bought said enlargements under the definite impression or belief, induced by the respondent's oral statements in his personal solicitations, that the same would in fact be colored in oil.

Said respondent has at various times directly or inferentially represented to prospective purchasers that the glass in the picture frames sold by him is "unbreakable."

At the time the enlargement is delivered and the balance of the purchase price has been paid, respondent thereupon directs the buyer's attention to the fact that the picture, being printed in a peculiar convex manner, requires a specific kind of frame with curved glass to make it look right, since no ordinary glassed frame could fit it; and he then solicits the purchase of one of his special frames at prices varying from \$6.90 to \$12.90, according to material and finish. The certificate which the customer had received when ordering the enlargement states, "Octagon style (convex) 10 x 16 inches in size for \$3.98 (without frame) * * * We handle a large selection of frames suitable for these portraits. However you are not obliged to order frame * * * This order cannot be cancelled." When taking such noncancellable order, respondent fails to reveal, however, that no frame ordinarily available at stores would be "suitable."

PAR. 3. In truth and in fact, respondent's colored enlargements in evidence are by no means comparable in workmanship, photographic quality, or finish with his selling samples in evidence; nor are they even good reproductions of the originals, also in evidence, from which the same were made; having, through poor workmanship, lost their photographic quality, being blurred or out of focus, with detail lacking, and with the coloring carelessly applied. Colored enlargements the same size but of better quality and workmanship are available to the public at various photofinishing studios and stores at approximately \$2.50.

Respondent's use of such samples superior in tone, coloring and photographic quality to the reproductions actually furnished by him, with his assurance that, contrary to fact, the enlargement ordered would be the same as said sample, has the capacity to and does deceive prospective purchasers into accepting his proposition (with non-cancellable order and initial payment) under the erroneous impression or belief that such representations are true.

Respondent's colored enlargements are concededly not done in oil; and the convex glass in his picture frames, while it might withstand a somewhat sharper rap or jolt than ordinary flat glass, is admittedly not unbreakable.

Such withholding or concealment of needful information regarding adequate frames until after the purchaser has bought and paid for respondent's photographic enlargement—namely, that none but his own peculiar and expensive frames could be used—is a form of bait merchandising, an unfair trade practice, in that purchasers intending to use a store frame are thus impelled to buy something not anticipated and costing much more than the picture itself.

PAR. 4. For two brief periods of about a week each, in April and September 1948, respondent Miller, in his house-to-house canvassing, employed a scheme to arouse the prospective customer's interest by having her draw one of several envelopes in his hand; then, regardless of the one selected, would inform her that she was "lucky" and thereby entitled to have a colored enlargement made of some picture for cost or at a reduced price. According to the record, however, this practice was abandoned on or prior to September 11, 1948, and has not been resumed. The Commission's first contact with said respondent, through its investigators, was November 4, 1948.

PAR. 5. Regarding other charges included in the complaint not mentioned herein, probative evidence is lacking to sustain the same.

CONCLUSIONS

The acts and practices of the respondent, Leroy Miller, as herein found, have all been to the prejudice of the public and have constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

However, concerning the respondent's use of purported lucky chance cards in connection with his merchandising, since this had been voluntarily abandoned by him some time prior to the Commission's first contact with him, and there has been no resumption of such practice, the public interest would not at the present time appear to call for corrective action with respect thereto.

Order

48 F. T. C.

The complaint in this procedure also named Bernard Robinson as a respondent, alleging that as a sales agent for respondent Leroy Miller, he has participated in the acts, practices and policies set forth therein, but no evidence was introduced to show that he ever actually participated in the practices described; and the complaint insofar as it relates to said Bernard Robinson should be dismissed.

ORDER

It is ordered, That the respondent, Leroy Miller, trading as Master Copying Studio, or under any other name or designation, and his agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of photographic enlargements and picture frames, or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, by statement or inference, that the photographic enlargements offered for sale by him are colored in oil, or that the glass in the picture frames which he sells is unbreakable.

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

3. Concealing from or failing to disclose to customers at the time such pictures are ordered that the finished picture when delivered will be so shaped and designed that it can be used only in an odd-style frame which cannot ordinarily be obtained in stores accessible to the consuming public, and that such frame can be procured from him only, generally at prices in excess of those already charged for the pictures.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to the respondent, Bernard Robinson.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondent, Leroy Miller, trading as Master Copying Studio, shall, within 60 days after service upon him of this order, file with the Commission in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist [as required by said declaratory decision and order of July 20, 1951].

Complaint

IN THE MATTER OF

CLARENCE LITTLEFIELD DOING BUSINESS AS
PLYMOUTH WOOLEN MILL

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF AN
ACT OF CONGRESS APPROVED OCT. 14, 1940

Docket 5846. Complaint, Feb. 5, 1951—Decision, July 21, 1951

Where an individual engaged in the manufacture, for introduction into commerce, and in the distribution therein, of blankets which were made for it by a certain corporation on a contract basis, and were wool products as defined in the Wool Products Labeling Act—

Misbranded said blankets in that, (1) labeled "100 percent wool, exclusive of ornamentation," they were not composed entirely of wool, as "wool" is defined in said act, but contained substantial amounts of "reused wool" and "reprocessed wool"; and (2) they did not have affixed thereto tags or labels showing their constituent fibers and the percentages thereof as required by said act:

Held, That such acts and practices, under the circumstances set forth, were in violation of sections 3 and 4 of the Wool Products Labeling Act of 1939, and the rules and regulations promulgated thereunder, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. James A. Purcell*, trial examiner.

Mr. R. L. Banks, Jr. and *Mr. Jesse D. Kash* for the Commission.

Mr. Shirley Berger, of Bangor, Me., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission, having reason to believe that Clarence Littlefield, an individual, doing business as Plymouth Woolen Mill, hereinafter referred to as respondent, has violated the provisions of said acts and rules and regulations promulgated under the Wool Products Labeling Act of 1939, 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 Clarence Littlefield, is an individual doing business as Plymouth Woolen Mill with his office and principal place of business located at Plymouth, Me.

PAR. 2. Subsequent to January 1, 1949, respondent manufactured for introduction into commerce, introduced into commerce, and dis-