

Complaint

IN THE MATTER OF

CLINTON STUDIOS, INC., ET AL.

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

Docket 5871. Complaint, Apr. 11, 1951—Decision, Apr. 3, 1952

Where a corporation and its two officers, sole stockholders thereof, doing a substantial volume of business in the interstate sale and distribution of photographs; through sales agents who visited homes in cities, towns, and rural communities in various states to solicit orders—

- (a) Represented falsely to prospective purchasers that a local studio specializing in children's photographs was to be opened in the near future by said corporation, and that photographs of local children were desired for display purposes in the proposed studio;
- (b) Represented that refunds would be made if customers were dissatisfied with their purchases;

The facts being that while, in many instances, they sent dissatisfied purchasers a duplicate set of pictures, they did not make refunds in all instances when requested to do so; and

- (c) Falsely represented, in some instances, that customers would receive oil paintings of the children photographed;

With capacity and tendency to mislead and deceive members of the purchasing public into the erroneous belief that such representations were true and thereby cause them to purchase photographs:

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.

Before *Mr. Earl J. Kolb*, hearing examiner.

Mr. B. G. Wilson for the Commission.

Mr. Maurice Schapira, of Newark, N. J., 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 Clinton Studios, Inc., a corporation, and Edward J. Davis and Ethel Davis, individually and as officers of said corporation, 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 Clinton Studios, Inc., is a corporation organized and doing business under the laws of the State of New

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Jersey with its principal place of business located in the city of Newark, New Jersey. Respondents Edward J. Davis and Ethel Davis are the President and Secretary, respectively, of said Clinton Studios, Inc., and the sole stockholders thereof. By virtue of their positions as officers and stockholders, the individual respondents direct, dominate and control the acts and practices of the corporate respondent.

PAR. 2. Said respondents are now and have been for several years last past engaged in the sale and distribution of photographs, and causing the same when sold to be shipped from their place of business in the city of Newark, New Jersey, to purchasers located in other States and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said photographs in commerce between and among the various States of the United States and in the District of Columbia. Respondents' volume of business in such commerce is substantial.

PAR. 3. In the course and conduct of their business, respondents employ sales agents or representatives who visit the homes of prospective customers in cities, towns and rural communities in various States of the United States and in the District of Columbia and solicit orders for their photographs. Said agents and representatives, in soliciting such orders, represent to prospective purchasers that a local studio specializing in children's photographs is to be opened in the near future by the Clinton Studios, Inc., and that photographs of local children are desired for display purposes in the proposed studio. Said agents or representatives also represented that refunds would be made if customers were dissatisfied with their purchases. In some instances, said agents or representatives further represented that customers would receive oil paintings of the children photographed.

PAR. 4. The aforesaid representations were false, misleading and deceptive. In truth and in fact, respondents had no intention of opening local studios and have not in any instance opened such studios. Photographs were not taken for display purposes nor were they ever displayed locally. While respondents, in many instances, sent dissatisfied customers a duplicate set of pictures, they did not make refunds in all instances when requested to do so. Respondents did not furnish oil paintings in accordance with the representation made by their agents or representatives.

PAR. 5. The use by the respondents of the aforesaid acts, practices and methods in connection with the offering for sale and sale of their photographs in commerce had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations were true and

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into the purchase of substantial quantities of their photographs in reliance upon such erroneous belief.

PAR. 6. 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.

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 April 3, 1952, the initial decision in the instant matter of hearing examiner Earl J. Kolb, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 11, 1951, issued and subsequently served its complaint in this proceeding upon respondents Clinton Studios, Inc., a corporation, and Edward J. Davis and Ethel Davis, individually and as officers of Clinton Studios, Inc., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After service of said complaint upon respondents and the filing of their answer thereto, a stipulation as to the facts was entered into whereby it was stipulated and agreed that a statement of facts executed by counsel supporting the complaint and counsel for respondents might be taken as the facts in this proceeding and in lieu of evidence in support of, and in opposition to, the charges stated in the complaint, and that such statement of facts might serve as a basis for findings as to the facts and conclusion based thereon and order disposing of the proceeding, without presentation of proposed findings, conclusions or oral argument. The stipulation further provided that upon appeal to, or review by, the Commission such stipulation might be set aside by the Commission and this matter remanded for further proceedings under the complaint. Thereafter, the proceeding regularly came on for final consideration by the above-named Hearing Examiner, theretofore duly designated by the Commission, upon the complaint and stipulation as to the facts, said stipulation having been approved by said Hearing Examiner, who, after duly considering the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Clinton Studios, Inc., is a corporation organized and doing business under the laws of the State of New Jersey with its principal place of business located in the city of Newark, New Jersey. Respondents Edward J. Davis and Ethel Davis are the President and Secretary, respectively, of said Clinton Studios, Inc., and the sole stockholders thereof. By virtue of their positions as officers and stockholders, the individual respondents direct, dominate and control the acts and practices of the corporate respondent.

PAR. 2. Said respondents are now and have been for several years last past engaged in the sale and distribution of photographs, and causing the same when sold to be shipped from their place of business in the city of Newark, New Jersey, to purchasers located in other States and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said photographs in commerce between and among the various States of the United States and in the District of Columbia. Respondents' volume of business in such commerce is substantial.

PAR. 3. In the course and conduct of their business, respondents employ sales agents or representatives who visit the homes of prospective customers in cities, towns and rural communities in various States of the United States and in the District of Columbia and solicit orders for their photographs. Prior to September 30, 1949, said agents and representatives, in soliciting such orders, represented to prospective purchasers that a local studio specializing in children's photographs was to be opened in the near future by the Clinton Studios, Inc., and that photographs of local children were desired for display purposes in the proposed studio. Said agents or representatives also represented that refunds would be made if customers were dissatisfied with their purchases. In some instances, said agents or representatives further represented that customers would receive oil paintings of the children photographed.

PAR. 4. The aforesaid representations were false, misleading and deceptive. In truth and in fact, respondents had no intention of opening local studios and have not in any instance opened such studios. Photographs were not taken for display purposes nor were they ever displayed locally. While respondents, in many instances, sent dissatisfied customers a duplicate set of pictures, they did not make refunds in all instances when requested to do so. Respondents did not furnish oil paintings in accordance with the representation made by their agents or representatives.

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PAR. 5. The use by the respondent of the aforesaid acts and practices in connection with the offering for sale and sale of their photographs in commerce has the capacity and tendency to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that such representations are true and to cause them to purchase respondents' photographs in reliance upon such erroneous belief.

CONCLUSION

The aforesaid 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.

ORDER

It is ordered, That the respondent Clinton Studios, Inc., a corporation, and its officers, and the respondents Edward J. Davis and Ethel Davis, individually and as officers of said respondent corporation and their respective representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of photographs or other similar 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, that photographs which are not locally displayed are being taken for the purpose of exhibition or display in local studios;
2. Representing, directly or by implication, that respondents will make refund of purchase price to dissatisfied customers upon request, when in fact respondents do not in all instances make refund upon demand;
3. Representing, directly or by implication, that respondents will furnish oil paintings of the subjects photographed.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein 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 the order to cease and desist [as required by said declaratory decision and order of April 3, 1952].

IN THE MATTER OF
**LEON ETTINGOFF ET AL. DOING BUSINESS AS GLOBE
MACHINE COMPANY**

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

Docket 5885. Complaint, June 27, 1951—Decision, Apr. 4, 1952

When articles of merchandise, including sewing machines, are exhibited and offered for sale by retailers to the purchasing public and such articles are not marked or are not adequately marked showing that they are of foreign origin, or if markings are covered or otherwise concealed, such purchasing public understands and believes such articles to be wholly of domestic origin.

There is among the members of the purchasing public a substantial number who have a decided preference for products originating in the United States over products, including sewing machine heads, originating in whole or in part in foreign countries.

Substantial numbers of the purchasing public prefer to deal with concerns which manufacture the products they sell.

Where three partners engaged in the competitive interstate sale and distribution to distributors and retailers of sewing machine heads imported by them from Japan, and of complete sewing machines assembled through attachment of a motor to said imported heads, in which process the words "Made in Occupied Japan" or "Japan" became covered—

- (a) Failed adequately to disclose on said heads that said products were made in Japan, notwithstanding upon the front of some of them there appeared a medallion bearing in small and indistinct words the legend "Made in Occupied Japan" or "Japan";

With the result of placing in the hands of dealers a means whereby they might deceive the purchasing public as to their place of origin; and

- (b) Falsely represented that they owned or controlled a factory or facilities for manufacturing sewing machines or sewing machine heads through use of the word "Manufacturers", as included in the phrase "Manufacturers and Distributors", displayed, along with their trade name, in their advertising;

With tendency and capacity to lead members of the purchasing public into the mistaken belief that their said product was of domestic origin and was made by them, and thereby induce purchase of sewing machines containing said heads; and unfairly to divert substantial trade in commerce to them from their competitors;

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