

Syllabus

IN THE MATTER OF

WARD S. AND JESSIE A. HILL TRADING AS GEPPERT
STUDIOSCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5180. Complaint, June 16, 1944—Decision, Dec. 12, 1952*

Where two partners engaged in the production, sale and distribution of plain and colored photographic enlargements; in conducting, in connection therewith, a mail-order business by means of advertisements in which they stated that, to get acquainted with new customers, they would beautifully enlarge free a snapshot or negative to make an 8 x 10 picture, that information on hand-tinting in natural colors would be sent immediately, and that the customer's picture would be returned with the free enlargement;

In follow-up material which they mailed the customer, following receipt of his name and address along with the print or negative submitted for free enlargement, which included a return postal card for ordering a hand-tinted, framed second enlargement of the print or negative submitted—

- (a) Implied that they would not send the free enlargement or return the original picture unless the hand-tinted enlargement was ordered through statements that they could not find the original picture (often of great sentimental value to the customer) without the order number on the postal card order blank, that they were waiting to recheck the address, that nothing could be sent out until the customer was heard from, and that pictures were not kept after they were finished and might be destroyed if the customer delayed sending in the postal card order blank;

With tendency and capacity through such coercive practices to cause the customer to order a hand-tinted enlargement which he would not otherwise have ordered through fear of loss of his original valued picture (which, failing to receive such order, they returned together with the promised free enlargement after a twenty-day period);

- (b) Represented that their black-and-white 8 x 10 inch enlargement of any submitted picture would be beautifully done in the sense that it would be a sharp, clear reproduction of the subject matter originally photographed;

The facts being that the said black-and-white enlargements were made without retouching, spotting, or any other treatment other than enlargement by photographic process, in the course of which, lacking an excellent original, any defects were magnified and made more apparent than they were in the original; many of the photographs submitted were defective and could not be beautifully enlarged without retouching, spotting, or other treatment by skilled persons; and certain of the enlargements produced by them from such photographs were blurred and indistinct and not beautifully enlarged by any standards;

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- (c) Falsely represented that their colored enlargements were of exceptional quality, were sharp and clear in detail, had realism, naturalness and sparkle, and were flattering to the subject; and
- (d) Falsely represented that their colored enlargements were comparable to those costing from \$10 to \$14 elsewhere;

The facts being that at best they were of no more than average quality and typical of hand-tinted enlargements made by inexpensive quantity production methods; their employees merely spotted certain blemishes and rubbed on thin transparent paint mixed with oil, at the expenditure of a few minutes' time only; and the great care and attention to detail and skilled artistry exercised in producing high-quality oil colored enlargements were not present;

- (e) Falsely represented that inherent defects such as lack of photographic detail in their black-and-white enlargements were remedied in their colored enlargements; and
- (f) Falsely represented that their colored enlargements were superior in quality and appearance to the four-color lithographed picture they displayed in their illustrated folder;

With tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that such representations were true and thereby induce purchase of their said enlargements, divert to them from their competitors substantial trade in commerce, and injure the mail-order photographic enlargement industry generally through loss of public confidence in the integrity of the members:

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

As respects the charge of the complaint that respondents falsely and misleadingly implied that their "get-acquainted" offer of a "free" enlargement was available for only a limited period of time and was free: the record showed that in fact said offer, while not limited in point of time, was limited to one enlargement per customer.

With regard to respondents' alleged misleading free offers, including those in which the offer was made without qualification and those in which the inclusion of 10¢ for handling and return mail was suggested: it appeared that respondents did furnish such an enlargement without cost to all who replied, irrespective of the inclusion of the suggested 10¢.

In regard to the alleged false representation that respondents gave a picture frame free: it appeared that respondents discontinued the use of such representations about one month prior to the issuance of the complaint and stated that they did not intend to resume said practice, and the Commission, under the circumstances, was of the opinion that the public interest did not require any further corrective action with respect thereto.

Other allegations of the complaint in the aforesaid matter to the effect that respondents falsely represented (1) that the customer by replying to the "get-acquainted" advertisements had requested information on hand-tinting, and (2) that the frame for the colored enlargement was handsome, were not sustained by the evidence of record.

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

Mr. Marshall Morgan and *Mr. William L. Taggart* for the Commission.

Rice, Miller & McDowell, of Kansas City, Kans., and *Hextell, Mitchell & Beving*, of Des Moines, Iowa, 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 Ward S. Hill and Jessie A. Hill, copartners trading as Geppert Studios, 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. Respondents Ward S. Hill and Jessie A. Hill, hereinafter referred to as respondents, compose as individuals a partnership trading under the firm name of Geppert Studios, with its principal office and place of business located at 210 East Locust Street, Des Moines, Iowa.

Respondents are engaged in the production, sale and distribution of plain and colored photographic enlargements and of frames therefor. Respondents operate a mail-order business. The business conducted by them also includes the development of Kodak film.

PAR. 2. In the course and conduct of their said business, operated as Geppert Studios, as aforesaid, respondents cause and at all times mentioned herein have caused their said products when sold to be transported from their place of business in the said State of Iowa to the purchasers thereof located in various States of the United States other than the State of Iowa, and in the District of Columbia. Respondents maintain and at all times mentioned herein have 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.

In the course and conduct of their said business respondents are now, and at all times mentioned herein have been, in substantial competition with various other firms and with corporations, partnerships and individuals likewise engaged in the sale of plain and colored photographic enlargements and of frames therefor.

PAR. 3. Customers and prospective customers are now and have been variously contacted by respondents through the medium of newspaper, magazine, and trade-paper advertising, by the use of radio continuities, and through the medium of United States mails. In the

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course and conduct of their said business in connection with and for the purpose of inducing the sale and distribution of their said products in commerce, respondents for more than six years last past have made, and have continued to make, and are now making, various false and misleading, advertising and sales representations and have engaged in and still employ various unfair and deceptive acts and practices in commerce, and various unfair methods of competition in commerce, of which the following are typical but are not all-inclusive:

(1) In numerous magazines and trade journals of general circulation respondents have run a one-inch display advertisement reading as follows:

FREE ENLARGEMENT

Just to get acquainted with new customers, we will beautifully enlarge one snapshot, print or negative, photo or picture to 8 x 10 inches—FREE—if you enclose this ad with 10¢ for handling and return mailing. Information on hand tinting in natural colors sent immediately. Your picture returned with your free enlargement. Send it today.

By radio continuities and by circulars disseminated in the various States of the United States respondents have referred to, and have made various representations concerning, said so-called "get-acquainted" advertisement. The sum of 10¢, it is represented, is to pay "the actual cost of mailing the enlargement out to you"; "to pay for packing, handling and mailing the finished enlargement." At other times it is and has been represented that the 10¢ is "only about paying for the paper the picture is printed on," or "will help cover the cost of handling and return postage."

Respondents represent and have represented to customers and prospective customers that this is "only an introductory offer" made to show the fine quality of Geppert Studios' work and that "it will be discontinued before long"; that this "may be the last time Geppert Studios will offer a 8 x 10 deluxe enlargement." The offer is and has been described as a "Special offer" made "for a limited time only," and it is represented that it "may be withdrawn immediately." Prospective customers are and have been assured in radio continuities that "in just a day or two you can hear from them (Geppert Studios) as to when you can expect your enlargement," and as to "when it will be ready"; and "that you will hear from them just as soon as they receive your copy," and that they will also get at that time "information regarding other photographic work."

Customers in submitting their orders to respondents for an 8 x 10 enlargement are and have been urged to "think of your father or mother, nieces or nephews, children or others near and dear to you, of whom you treasure photos or snapshots"; to " * * * get out the

snapshot, print, negative, photo or picture that means everything in the world to you," and to "think of having a beautiful lifelike 8 x 10 inch enlargement of any snapshot, print or negative FREE, a big 8 x 10 picture of someone near and dear to you—if you will merely enclose 10¢ in coin to help cover cost of handling and return postage * * *."

In later magazine advertising the language reading "FREE—if you will enclose this ad with 10¢ for handling and return mailing" was changed to read: "FREE—if you will enclose this ad. (10¢ for handling and return mailing appreciated.)"

Respondents' original offer of an 8 x 10 inch enlargement of a photographic snapshot or negative "FREE" is not and does not constitute and has not constituted the offer of a "free" picture or product. While customers are not so informed, and do not so understand, the sum of 10¢ which the customer is directed or requested to remit to help pay the expense of "handling and return mailing," in truth and in fact covers the entire cost of producing and delivering such enlargement, or in any event constitutes a substantial payment on or toward the total expense incurred in producing and delivering said enlargement.

Further, in truth and in fact, the so-called "get-acquainted" offer of respondents is not and never has been any "special offer" or one made "for a limited time only" that may be "withdrawn soon" or "withdrawn immediately," or any offer of short duration, but on the contrary is the identical, first approach advertising offer which has been made by respondents in the usual course of their business since 1938.

(2) In radio advertising employed in connection with said initial or "introductory offer," respondents represent that they will "beautifully enlarge" a picture to 8 x 10 inches "FREE," * * * that they will turn out "a big 8 x 10 enlargement, professional quality, clear, sharp and beautiful for only 10¢." The offer is described as a "once in a lifetime offer"; "a beautiful permanent enlargement." The offer is also described as "sensational" and "amazing."

Said enlargements do not, in fact, possess the quality, merit, or value ascribed to them as represented by respondents.

In truth and in fact the said 8 x 10 black and white enlargement represented by respondents as "beautifully enlarged" and of "splendid quality," and "a beautiful permanent enlargement" is nothing more than a quickly and cheaply made photographic enlargement which respondents use later to compare unfavorably and disparagingly with a colored enlargement, as hereinafter related, in order to effect the sale of the more expensive and profitable colored enlargement.

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(3) Respondents' said original offer, as hereinafter alleged and shown, is not and never has been a bona fide offer to give away or to sell a plain 8 x 10 inch black and white enlargement of a photograph or snapshot, but is and has been known in the picture industry as a "come-on" or "bait" offer in which respondents pretend to give away or sell one article, a plain enlargement, until they obtain a customer's name and address and a treasured family photograph, plus 10 cents. Then by carefully operated deception and duress respondents force the customer into buying, or induce the customer to buy, at much greater expense a tinted or colored enlargement the customer had not originally ordered or contemplated ordering. Respondents, as more fully hereinafter related, by deception, disparagement of the plain enlargement, and by falsely representing that the customer's original order number and the family photograph submitted therewith can only be located by returning an enclosed postal card, practically force the customer into buying a colored enlargement costing from 50 to 75 cents, plus postage. Respondents carefully refrain from disclosing to the customer by radio or otherwise that their real purpose in submitting said original offer was and is to sell the customer something he did not intend purchasing, namely, a colored enlargement on which respondents make and have made a substantial profit.

(4) Upon the receipt of the customer's name and address, the 10 cents, and a copy of the advertisement offering the "free" 8 x 10 enlargement, respondents immediately transmit to the customer, (a) a printed circular, (b) an illustrated four-color lithographic circular, and (c) a return postal card.

Respondents represent, and have represented, in said circular that a plain black and white picture is "unfinished"; that the colored enlargement is "more life like," is "much better"; that it is in fact "a beautiful work of art," "the last word." Superiority of hand-tinting over four-color lithographing is claimed. The customer is invited to refer to one of the circulars to "compare" the black and white picture with the "finished in color," and to "see the difference."

Through the medium of these and similar disparaging representations and comparisons not herein set forth, respondents endeavor to induce and have induced and are inducing customers and prospective customers to believe that the black and white enlargement theretofore ordered by him, and not yet delivered, is an inferior product, thoroughly inadequate, and undesirable, and that he should have a different product, namely, a colored enlargement.

In one of said circulars a colored enlargement, 8 x 10 inches in size, has been offered for 50 cents, together with a "free" 5 x 7 black and white enlargement. In a latter circular the price of the colored

enlargement was increased from 50 cents to 75 cents. Respondents withhold and have withheld the preparation and delivery of the black and white "get acquainted" enlargement for as much as twenty days pending their persistent effort, by disparaging the black and white enlargement, to induce the customer to buy the more expensive "special offer" colored enlargement. Respondents advise the customer that the "special offer" made in the circular letter "can only be made when we have your enlargement here."

The said 8 x 10 inch "free" black and white enlargement to be made by respondents in connection with their original offer, upon the remittance of 10¢ by the customer, instead of being delivered to the customer in pursuance of his order, is thus withheld from the customer by respondents, and not completed, pending the result of respondents' efforts to cause the customer to become dissatisfied with the disparaged black and white enlargement he had ordered and to induce him to purchase the colored enlargement instead. All of said disparagement of the black and white enlargement occurs after the customer has ordered such product, but prior to the making of the product and delivery of the same to him.

In truth and in fact customers have not understood, and respondents have carefully concealed from them, that the real purpose of respondents in making their so-called "get acquainted offer" was not to sell a plain black and white enlargement but to sell instead a colored enlargement on which, as heretofore alleged, respondents make a substantial profit.

Further, in truth and in fact, respondents' subsequent offer respecting a colored enlargement designated as a "special offer" is not and never has been a "special offer" in any sense but is and has been the regular offer made by respondents for such product in the regular course of business over a long period of years.

(5) In emphasizing the expensive quality and expert finish of their said tinted or colored enlargements, respondents have represented in their said circulars that such "quality tinting" as that found in their work might cost as much as \$10 elsewhere; that pictures made by others for \$10 were not as "nice" as one enlarged and colored by them for 75 cents; were "more clear and natural looking by far" than those pictures costing as high as \$12 and \$14 elsewhere.

In truth and in fact the said tinted or colored enlargements sold by respondents at 75¢ do not have and never have had any \$10, \$12, or \$14 sales price or any price remotely approximating any of said sums, but, on the contrary, said products are cheaply made, inexpensively tinted or colored enlargements for which 75¢ is a good price and on which respondents realize a substantial profit.

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(6) Through the medium of a further circular disseminated by respondents in commerce, a customer who had sent in 10 cents and a picture in order to obtain a "beautiful enlarged black and white picture" is placed in the attitude of having inquired regarding hand-painting, and in order to locate and recover the original photograph or snapshot which had been transmitted by him to respondents, the customer is compelled to sign a postal card order for a hand-tinted enlargement costing 75 cents, plus postal charges.

In the advertisement which had been answered by the customer it was merely stated that: "Information on hand-tinting in natural colors sent immediately." In the latter circular employed by respondents the customer is represented as having requested information on hand-tinting and he is informed that a colored picture is being made for him. Says this circular:

I was certainly pleased to receive your order for a plain 8 x 10 inch enlargement this morning. You may rest assured that our expert workmen will do their very best.

Since you requested information on hand-tinting, I will also make a second 8 x 10 inch enlargement from your treasured picture and have our experienced skillful artist hand-tint it in natural, true lifelike colors, then place it in a handsome frame of your own choice.

* * *

I want to please you in every way and have told our art department that you will probably want this extra work done.

In truth and in fact the customer had not requested information on hand-tinting, had not ordered any hand-tinted picture and had not ordered any frame in which to place the picture he had not ordered.

Respondents in this circular again disparage the black and white enlargement the customer had originally ordered, with a view to inducing the customer to buy the more expensive hand-tinted picture.

In return postal card enclosed with this circular, the following representation is made:

FREE

Handsome Frame

Your choice of either the beautiful Black and White or Ivory and Gold Frame is given with your hand colored enlargement.

The principal text of the return postcard reads:

Please rush my free 8 x 10 enlargement, and my second hand-tinted 8 x 10 enlargement in a FREE Frame. I am sending no money. When the two enlargements arrive (one 8 x 10 inch plain and one 8 x 10 inch colored enlargement in a Free Frame) I will pay only 75¢ plus a few cents for handling and postage to my mailman for the second hand-tinted enlargement. The first plain 8 x 10 inch enlargement and the frame are free.

In truth and in fact the said frame is in no sense a fine or handsome frame, but, on the contrary, it is a cheap insubstantial affair made of paper composition, costing only a few cents at most, and said cost is more than covered and absorbed by the price obtained for the colored enlargement.

(7) Said respondents further engage in both deception and duress in order to induce the customer to sign and return the above-described postcard obligating him to purchase a tinted or colored enlargement for 75 cents, plus postal charges. In connection with the return of the signed postal card respondents represent:

Please sign and mail the enclosed card today. By it, you will let me know which frame you wish—* * * It will also give me an opportunity to recheck your address on the shipping label before mailing your plain enlargement which is being made and will be sent to you when finished. So please give us all necessary information on the enclosed card which requires no postage.

* * *

The special offer made in this offer can be made one time and to new customers only, and must be done while I have your order here. * * *

P. S. SPECIAL NOTICE.—Please be sure to return the enclosed postcard with your instructions * * * It bears your file order number which we need to locate your picture * * * *WE CANNOT LOCATE YOUR PICTURE WITHOUT IT.*

By said representations respondents lead the customer to believe that in order to locate his original order for a plain black and white enlargement and to locate the treasured or prized picture or photograph the customer had theretofore transmitted with his original 10-cent order, it will be necessary for the customer to sign and return the postcard which has his order number stamped thereon, and that unless said postcard is signed and returned the customer's treasured photograph and the black and white enlargement also are lost.

In truth and in fact the location and identification of the customer's order number and picture, including the treasured or prized photo that had been transmitted originally by the customer, are not dependent upon the customer's signing and returning the said postcard. The said order number and 8 x 10 inch picture, and the original photograph, are not lost or misplaced as the apprehensive customer is led to believe, and no signed postcard is necessary to locate them. Nevertheless, the purpose and mission of said postcard and the circular accompanying it are to force or induce the customer, under fear of losing his photograph and black and white picture, to sign an order for a 75¢ tinted or colored enlargement, and the customer's said treasured picture or photograph is withheld from him by respondents to enable them, through misrepresentation and duress, to force the customer into buying said 75 cent enlargement.

PAR. 4. The use by respondents of the aforesaid acts, practices and methods in connection with the offering for sale and sale of their 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 respondents make, including the identity of the actual product respondents are selling and offering for sale, and concerning the quality and value of their said enlargements, and has led, and does lead, purchasers erroneously to believe that the representations and implications so made and used by respondents are true, and causes and has caused a substantial number of the purchasing public to purchase substantial qualities of said products.

The use by respondents of the aforesaid acts, practices and methods further has the tendency and capacity to do, and does unfairly divert trade to respondents from their competitors engaged in the sale of black and white and tinted or colored photographic enlargements of photographs and snapshots and of frames therefor in commerce among and between the various States of the United States and in the District of Columbia, who truthfully represent their said products. As a further consequence of the aforesaid acts and practices of the respondents the business of competitors has been injured by a loss of prestige with and the loss of the confidence of a substantial portion of the public.

PAR. 5. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on June 16, 1944, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of said Act. After the filing of respondents' answer, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a hearing examiner of the Commission duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter this

proceeding came on for final consideration by the Commission on the complaint, answer thereto, testimony and other evidence, recommended decision of the hearing examiner and exceptions thereto by counsel for respondents and counsel supporting the complaint, 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 hearing 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 its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Ward S. Hill and Jessie A. Hill are individuals trading as copartners under the trade name of Geppert Studios with their office and principal place of business at 608 East Locust Street, Des Moines, Iowa.

Respondents are engaged in the photo-finishing business and in the production, sale and distribution of plain and colored photographic enlargements. Respondents conduct a mail order business in connection therewith.

PAR. 2. Respondents cause and have caused their said products, when sold, to be transported from their place of business in the State of Iowa, to 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 products in commerce between and among the various States of the United States and in the District of Columbia. Respondents are now, and at all times mentioned herein have been, in substantial competition with others likewise engaged in the sale and distribution of plain and colored photographic enlargements in commerce.

PAR. 3. In the course and conduct of their aforesaid business and in promotion thereof, respondents have placed advertisements in various newspapers and periodicals throughout the United States in which advertisements they stated that for the purpose of getting acquainted with new customers they would beautifully enlarge free, one snapshot, photo or picture from a print or negative to make an 8 x 10 inch picture. Said advertisements also stated that information on hand-tinting in natural colors would be sent immediately and that the customer's picture would be returned with the free enlargement.

PAR. 4. Upon receipt of the customer's name and address along with the print or negative submitted for free enlargement, it has been the

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respondents' practice to mail a follow-up letter consisting of form letter, an illustrated folder and a return postal card for ordering a hand-tinted frame enlargement of the print or negative submitted. Typical of the statements contained in respondents' form letters are the following:

Since you requested information on hand tinting, I will also make a second 8 x 10 inch enlargement from your treasured picture * * * and have our experienced skillful artist hand tint it in natural true lifelike colors, then place it in a handsome frame of your choice.

You will find enclosed "The Unfinished Work," which will tell you how much more natural and life-like hand tinting in natural oils makes any enlargement. * * *

* * *

Please sign and mail the enclosed card today. By it, you will let me know which frame you wish * * * also will give me an opportunity to recheck your address on our shipping label before mailing your plain enlargement which is being made and will be sent to you when finished. So please give us all necessary information on the enclosed card which requires no postage.

* * * So let us hear from you right away. Fill out the enclosed card and drop it in the mail today.

The special offer made in this offer can be made one time and to new customers only and must be done while I have your order here. Therefore I will wait until I hear from you.

* * * be sure to let me hear from you as we do not keep pictures after they are finished. Don't delay! Fill out the enclosed card and mail it right away—TODAY!

P. S. SPECIAL NOTICE—Please be sure to return the enclosed postcard with your instructions * * * it bears your file order number which we need to locate your picture * * * *WE CANNOT LOCATE YOUR PICTURE WITHOUT IT.*

The postal card referred to contained an order for a framed and tinted 8 x 10 inch enlargement of the picture previously submitted. The return postal card sent by respondents reads as follows:

SEND NO MONEY
BEAUTIFUL IVORY & GOLD
OR BLACK & GOLD FRAME

Your choice of either the beautiful Black and Gold frame or Ivory and Gold frame is included with your hand-colored enlargement. Both have easel back and give permanent protection from tearing as well as adding beauty that must be seen to be appreciated. Please check the frame you wish below.

MAIL THIS CARD TODAY
MR. WARD S. HILL, *President*
GEPPERT STUDIOS

Please rush my 8 x 10 enlargement and the second hand-tinted 8 x 10 enlargement on deluxe golden-toned, extra heavy paper in a beautiful frame. I am sending no money. When the two enlargements arrive (one 8 x 10 plain and one 8 x 10 colored on deluxe, golden-toned, extra heavy paper framed), I will pay

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only \$1.49, plus a few cents for handling and postage to my postman for the second enlargement.

Name _____ Post Office _____
Address or R. F. D. _____ State _____

The third enclosure is a printed folder entitled "THE UNFINISHED WORK," on the front page of which is sketched a partly done black-and-white portrait with features and expression missing. Inside is a handsomely lithographed half-tone in colors and beside it a smaller black-and-white cut of the same subject. Typical of the statements contained in this folder are:

YOUR SNAPSHOT ENLARGEMENT BECOMES A BEAUTIFUL WORK OF ART WHEN HAND TINTED!

Even this beautiful illustration by expensive four-color lithography does not do full justice to the original photograph—compared with what *you* get when we hand-tint your enlargement.

* * * Any photograph you send us to have hand-tinted does become a work of art, * * *.

* * * our artists can add so much realism, naturalness and sparkle when they hand-tint your enlargement. * * * have uncanny ability to bring out exactly the right shades of color in a way to flatter any subject. * * *

Quality tinting such as you get from the Geppert Studios for the small charge we make, might cost as much as \$10.00 elsewhere. But under our plan, every home can enjoy the advantages of this modern development, *color in photography*, at a cost of only a few cents. * * *

Through up-to-date methods, through careful and expert workmen, the Geppert Studios have become nationally known for pictures of exceptional quality. * * *

When we first inaugurated this service, it represented a new era in photography—it meant that another milestone in photographic history had been passed. * * * Color marks one of the biggest improvements in pictures—and color is **YOURS** to enjoy at trifling cost. * * *

A FEW LETTERS SENT BY THOUSANDS OF PLEASED CUSTOMERS * * *

PAID \$10 FOR PICTURE NOT AS GOOD

* * * My mother-in-law paid ten dollars for this same picture enlarged by someone else and I can truthfully say it is not as nice as this one that only cost me seventy-five cents enlarged and colored by you.

* * *

BETTER THAN PICTURES AT \$12 TO \$14

* * * we have never seen one painted before that looks so natural. Have seen pictures that came as high as \$12 and \$14 and can say this one is more clear and natural looking by far.

PAR. 5. Respondents' operating schedule is such that a picture submitted in response to their offer of a free enlargement has not completed the enlargement process until at least twenty days after its

receipt by respondents. This allows ample time for the customer to send in his order for a hand-tinted enlargement. Upon receipt of the postal card ordering a hand-tinted picture, two 8 x 10 inch enlargements, are made, one is hand-tinted, and both are then sent c. o. d. to the customer together with his original picture. If no order for the hand-tinted picture is received within the twenty days, one 8 x 10 inch black-and-white enlargement is made and, together with the original picture, is sent to the customer at no cost to him.

PAR. 6. Through the use of the statements and representations above set forth respondents have implied that they will not send the free enlargement or return the original picture unless the hand-tinted enlargement is ordered. They have implied that they cannot find the original picture without the order number on the postal card order blank, that they are waiting to recheck the address, that nothing will be sent out until the customer is heard from and that pictures are not kept after they are finished and may be destroyed if the customer delays sending in the postal card order blank. The type of picture submitted for photographic enlargement is often one which is of great sentimental value to the customer. Thus respondents' representations have had the tendency and capacity to cause the customer to order a hand-tinted enlargement, which he would not otherwise have ordered, through fear of loss of his original valued picture.

PAR. 7. Through the use of the statements and representations hereinabove set forth or described and others similar thereto not specifically referred to herein, respondents also have represented (1) that their black-and-white 8 x 10 inch enlargement of any submitted picture will be beautifully done in the sense that it will be a sharp, clear picture of the subject matter originally photographed, (2) that their colored enlargements are of exceptional quality, being sharp and clear in detail, have realism, naturalness and sparkle, and are flattering to the subject, (3) that their colored enlargements are comparable to those costing from \$10 to \$14 elsewhere, (4) that inherent defects, such as lack of photographic detail, in their black-and-white enlargements are remedied in their colored enlargements, and (5) that their colored enlargements are superior in quality and appearance than their four-color lithographed picture in their illustrated folder.

PAR. 8. Respondents' black-and-white enlargements made from photographs submitted in response to their free offer are made without retouching, spotting or any other treatment other than enlargement by photographic process. In order for a good enlargement to be made from a photograph or negative by this method, the original must be excellent photographically. Any defects such as blemishes, bad exposure, wrong focus or surface flaws will be magnified and more appar-

ent in the enlargement than they were in the original photograph. Such photographs are not beautifully enlarged in the sense that they are sharp, clear pictures of the subject originally photographed. Many of the photographs submitted for enlargement are defective and cannot be beautifully enlarged without retouching, spotting and other treatment by skilled persons. Certain of the enlargements produced by respondents from such photographs are blurred and indistinct and are not beautifully enlarged by any standard.

Respondents' colored enlargements are not of exceptional quality. Many of them are neither clear nor sharp in detail, do not have realism, naturalness, or sparkle and are not flattering to the subject originally photographed. None of them are comparable in quality to the class of professionally made enlargements which sell for from ten to fourteen dollars. At best they are no more than average quality and typical of hand-tinted enlargements made by inexpensive quantity production methods.

In producing their colored enlargements, respondents' employees merely spot certain blemishes in the print and rub on thin transparent paint mixed with oil, all of which work is performed in a few minutes time. The great care, attention to detail and skilled artistry exercised in producing an expensive, high quality, oil-colored enlargement are not present in respondents' work. Lack of clarity and detail in their enlargements, resulting from or made more obvious by the enlargement process, is not remedied by their hand-tinting process. Said hand-tinted enlargements are inferior in quality and appearance to the four-color lithographed picture in respondents' illustrated advertising folder.

PAR. 9. The complaint further alleges that respondents' "get acquainted" offer of a "free" enlargement is false and misleading in that it falsely implies that the offer is going to be available for only a limited period of time and is free. It further alleges that, in fact, the offer is not for a limited period of time, being respondents' regular offer, and that the enlargement is not free in that a fee of ten cents, represented to be for handling and return mail but which allegedly covers a substantial part of the total cost, is required or requested.

In fact, respondents' offer, while not limited in point of time, is limited to one enlargement per customer. The record shows that when respondents receive an order which is shown on its face or is determined in some other manner to be a repeat order, the customer is required to pay a higher price established for other customers. Upon this record it cannot be found that respondents' use of the term "get acquainted" is false and misleading.

Since entering into an agreement with the Commission in 1942 to cease and desist from representing that a photographic enlargement is given free when, in fact, a consideration is required therefor, respondents have used two forms of "free" offers of photographic enlargement. One offered the enlargement "free" without qualification. The other, in addition to the free offer, stated that ten cents for handling and return mail would be appreciated. In fact, respondents furnished an enlargement without cost to all persons responding to said advertisement whether ten cents was sent or not. The record does not show that the cost of handling and return mail was less than ten cents. Upon this record it cannot be found that respondents' use of the term "free" in their offers of free enlargements has been false or deceptive since 1942.

The complaint also alleges that respondents have falsely represented that they were giving a picture frame free. The record shows that respondents discontinued the use of this representation approximately one month prior to the issuance of the complaint herein. Respondents have stated they do not intend to resume this practice. Under the circumstances the Commission is of the opinion that the public interest does not require any further corrective action as to this practice.

Other allegations of the complaint to the effect that respondents falsely represented (1) that the customer, by replying to the get acquainted advertisements, had requested information on hand-tinting, and (2) that the frame for the colored enlargement was handsome, have not been sustained by the evidence of record.

PAR. 10. The use by respondents of the false and deceptive statements and representations, referred to in Paragraphs Seven and Eight of these findings, has had 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 were true and into the purchase of respondents' enlargements as a result of such erroneous and mistaken belief.

The purchase of respondents' enlargements because of respondents' coercive practices as referred to in Paragraph Six of these findings or because of respondents' false and deceptive statements and representations as referred to in Paragraphs Seven and Eight of these findings has had the tendency and capacity to divert to respondents from their competitors substantial trade in commerce between and among the various States of the United States and in the District of Columbia.

The use of said coercive practices and false and deceptive representations also has had the tendency and capacity to injure the mail order

photographic enlargement industry generally through loss of confidence of a substantial portion of the public in the integrity of the members of the industry.

CONCLUSION

The acts and practices of the respondents as herein found (excluding those found in Paragraph Nine) were all to the prejudice and injury of the public and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, respondents' answer thereto, testimony and other evidence in support of and in opposition to the allegations of the complaint introduced before a hearing examiner of the Commission theretofore duly designated by it, the hearing examiner's recommended decision and exceptions thereto, briefs and oral argument of counsel; and the Commission 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 Ward S. Hill and Jessie A. Hill individually and as co-partners trading as Geppert Studios, 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 photographic products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Stating or implying in any manner that a print or negative submitted for enlargement in response to an advertised offer will not be returned unless an additional purchase is made or act performed which was not required in said offer.

2. Engaging in any practice which has the effect of coercing persons to purchase merchandise they otherwise would not have purchased.

3. Representing, directly or by implication:

- (a) That any print or negative submitted will be beautifully enlarged unless it is clearly stated that for such results the print or negative submitted must be photographically suitable.

- (b) That their colored enlargements of all prints or negatives submitted will be sharp and clear in detail, will have realism, naturalness or sparkle or will be flattering to the subject.

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(c) That their colored enlargements are of exceptional value; that they are of a value in excess of their true market value; or that they are comparable or superior in quality or appearance to any specified illustration, unless such is the fact.

(d) That any lack of photographic detail or other defects in their black-and-white enlargements are remedied in their colored enlargements unless such is the fact.

4. Publishing any testimonials which contain any of the above prohibited representations.

It is further ordered, That 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 this order.

Complaint

IN THE MATTER OF

ACADEMY KNITTED FABRICS CORPORATION 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 6028. Complaint, Aug. 11, 1952—Decision, Dec. 27, 1952

Where a corporation engaged in the manufacture and interstate sale and distribution of certain fabrics made of highly inflammable brushed rayon which resembled in texture and appearance fabrics made of wool, acetate and other fibers not readily inflammable, and were used by the purchasers for sweaters and other articles of wearing apparel for the consuming public; and its three officers—

Sold and distributed said fabrics without disclosing either on their invoices or bills to purchasers or by attached labels or tags that they were highly inflammable, and thereby impliedly warranted that they were suitable for use in the manufacture of wearing apparel and that such apparel was safe to wear, when in fact they were dangerous and unsafe for use;

With tendency and capacity to mislead a substantial number of manufacturers of wearing apparel and members of the consuming public as to the safety of the fabrics and wearing apparel made therefrom, and thereby cause them to purchase substantial quantities of such fabrics or apparel; and with effect of placing in the hands of uninformed or unscrupulous manufacturers a means and instrumentality whereby members of the purchasing public might be deceived:

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. William L. Pack*, hearing examiner.

Mr. George E. Steinmetz for the Commission.

Solomon & Rosenbaum, 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 Academy Knitted Fabrics Corporation, a corporation, and Jacob M. Wallerstein, Harry Leventhal and Murray Feiner, 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: