

IN THE MATTER OF
LAMAR J. GORE DOING BUSINESS AS LAMARR
PORTRAIT COMPANY

DECISION IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL
TRADE COMMISSION ACT

Docket 6169. Complaint, Feb. 10, 1954—Decision, June 20, 1954

Where an individual engaged in the interstate sale and distribution of photographic enlargements and frames therefor through field representatives whom he supplied with sample enlargement, frames, and other supplies, including suggested sales talks, and who solicited prospective purchasers under a practice in accordance with which the first representative advised the purchaser of an enlargement that another would call upon him at a later date, show proofs, and exhibit suitable frames but with no obligation to purchase, and collected at that time all or a part of the purchase price of the enlargement—

- (a) Falsely represented, in soliciting for the sale of said enlargements, that the product would be finished or painted by hand in oil by some famous named artist, would be equal in appearance, quality, and workmanship to the samples exhibited, and that the price of \$5.95 or \$9.90 charged therefor was a special and reduced price;
- (b) Neglected to advise the purchaser of the enlargement, at the time of purchase, that the finished product would be of a special shape requiring a special frame which the representative stated to the purchaser, when exhibiting the proofs along with the frame, could be purchased only from respondent:

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

Before *Mr. William L. Pack*, hearing examiner.

Mr. William J. Tompkins for the Commission.

Wingo & Finch, of Hattiesburg, Miss., for respondent.

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 June 20, 1954, the initial decision in the instant matter of hearing examiner William L. Pack, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges respondent with the use of unfair and deceptive acts and practices in commerce in violation of

the Federal Trade Commission Act. After the filing of respondent's answer to the complaint, counsel supporting the complaint and counsel for respondent entered into a stipulation of facts which provides that, subject to the approval of the hearing examiner, the statement of facts included in the stipulation may be taken as the facts in the proceeding and in lieu of evidence in support of or in opposition to the charges in the complaint, and that the hearing examiner may proceed upon such statement of facts to make his initial decision, stating his findings as to the facts, including inferences which may be drawn from the facts stipulated, and his conclusion based thereon, and enter his order disposing of the proceeding without the filing of proposed findings or conclusions or the presentation of oral argument. The stipulation further provides that if the proceeding should come before the Commission upon appeal from the initial decision of the hearing examiner or by review upon the Commission's own motion, the Commission may, if it so desires, set aside the stipulation and remand the case to the hearing examiner for further proceedings under the complaint. The stipulation having been approved by the hearing examiner, and the proceeding having regularly come on for final consideration upon the complaint, answer, and stipulation, the hearing examiner finds that this proceeding is in the interest of the public and makes the following findings as to facts, conclusion drawn therefrom, and order.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Lamar J. Gore is an individual doing business under the trade name of LaMarr Portrait Company, with his office and principal place of business located at 1903 Hardy Street, Hattiesburg, Mississippi.

PAR. 2. Respondent is engaged in the sale of photographic enlargements and frames therefor to the purchasing public. In the course and conduct of his business respondent causes his photographic enlargements and frames, when sold, to be transported from his place of business in the State of Mississippi to purchasers located in various other states. He maintains a course of trade in such products in commerce among and between the various states of the United States, the volume of such trade being substantial.

PAR. 3. Respondent employs field representatives who call upon prospective purchasers in their homes and solicit the sale of enlargements and frames. Respondent furnishes his representatives with sample enlargements, frames and other materials and supplies, including suggested sales talks, which the representatives use in soliciting the sale of enlargements and frames therefor. When soliciting

Findings

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the sale of enlargements, the representatives exhibit the sample enlargements and state that they are hand painted with oils by a famous artist and that, if the prospect desires to purchase an enlargement, it will be finished or painted by hand in oil by such artist or some other artist and will be equal in appearance, quality and workmanship to the samples exhibited; and that the price of \$5.95 or \$9.90 charged for an enlargement is a special and reduced price. In case the prospect agrees to buy an enlargement, the representative then states that another representative will call upon the purchaser at a later date and show a proof or bromide of the enlargement and that, while the finished enlargement does not come with a frame, such representative will exhibit suitable frames at the time he shows the proof but that there is no obligation to purchase one. In the event a sale is made, the first representative collects all or a part of the purchase price. When the proofs are later exhibited to the purchaser, along with frames, by the second representative, the purchaser is informed and learns for the first time that the finished enlargement will be of a special shape requiring a special frame which the representative states can only be purchased from respondent.

PAR. 4. These representations are false and misleading. Actually, the enlargements are not finished or painted by any artist or by hand or in oil. The finished enlargements delivered to purchasers are inferior in appearance, in quality and in workmanship to the samples exhibited. The prices of \$5.95 and \$9.90 are not special or reduced prices for the enlargements but are the prices at which respondent usually and regularly sells them.

PAR. 5. It appears that the representations in question, while made to prospective purchasers by respondent's field representatives in the regular course of their employment, were never authorized by respondent, being made without his knowledge, consent or approval, and that respondent had instructed his representatives to make no misrepresentations regarding his products.

PAR. 6. The use of the representations set forth above has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondent's products, and the tendency and capacity to cause such members of the public to purchase such products as a result of the erroneous and mistaken belief so engendered. And the failure of respondent's representatives to disclose, prior to the taking of an order and the payment by the purchaser of the purchase price or a part thereof, that the enlargements are of a special shape for which frames can be purchased only from respondent has the tendency and capacity to induce members of the public to purchase respondent's enlargements when they would not have done so had such fact been disclosed.

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Order

CONCLUSION

The acts and practices of respondent as herein found are all to the prejudice 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, Lamar J. Gore, an individual doing business as LaMarr Portrait Company, or under any other name, his agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of photographic enlargements or frames, do forthwith cease and desist from :

1. Representing, directly or by implication,

(a) That said enlargements are finished or painted by hand or in oil, unless such is the fact.

(b) That said enlargements are equal in appearance, quality, workmanship, or in any other respect to samples exhibited, unless such is the fact.

(c) That any price is a special or reduced price when it is the price at which said enlargements are usually and regularly sold.

2. Concealing from, or failing to disclose to, customers at the time enlargements are ordered that the finished enlargement will be so shaped or designed that it can ordinarily be used only in an odd-style frame which is sold by respondent.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondent herein shall within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist [as required by said declaratory decision and order of June 20, 1954].

IN THE MATTER OF
ZONITE PRODUCTS CORP. AND H. W. KASTOR & SONS
ADVERTISING CO., INC.

Docket 4755. Order and opinion, June 23, 1954

Mr. R. P. Bellinger for the Commission.

Littlefield & Marshall, of New York City, for Zonite Products Corp.

Mr. Harris F. Williams and *Mr. B. Blakeney Harris*, of Chicago, Ill., for H. W. Kastor & Sons Advertising Co., Inc.

ORDER RULING ON MOTION OF RESPONDENT ZONITE PRODUCTS
CORPORATION

This matter having come on to be heard upon the motion of the respondent above named which requests under date of March 25, 1954, that this proceeding be reopened and that subparagraph (a) of Paragraph 1 of the order to cease and desist as entered herein on May 17, 1944, be stricken and eliminated; and

The Commission having duly considered such motion and the answer in opposition thereto as filed by counsel who appeared in support of the complaint, and having concluded for the reasons stated in the accompanying opinion that the motion should be denied:

It is ordered, That the respondent's motion be, and it hereby is, denied.

OPINION OF THE COMMISSION

By CARRETTA, Commissioner:

This matter came on for our consideration upon the letter dated March 25, 1954, and submitted on behalf of Zonite Products Corporation by its Vice President-Treasurer, requesting that the order to cease and desist heretofore entered by the Commission on May 17, 1944, be modified by striking or eliminating subparagraph (a) of Paragraph 1 therefrom. Answer in opposition to the granting of such request has been filed by counsel who appeared in support of the complaint during the course of the original proceedings, and we are treating such letter as a motion duly filed on this respondent's behalf.

The provision of the order to which the request relates forbids the dissemination in commerce of any advertisement relating to the medicinal preparations "Zonite Liquid" and "Zonitors" which represents, directly or by inference: