

Complaint

IN THE MATTER OF

FUR & WOOL MILLS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket 6505. Complaint, Feb. 13, 1956—Decision, May 31, 1956*

Consent order requiring three corporations occupying the same premises at Danbury, Conn., and closely related by stock ownership, common officers, and business relationships, to cease violating the Federal Trade Commission Act through invoicing fur fibers to mills and other purchasers as "Natural Guanaco," "Guanaco Fur Blend," "Mink Fur Blend," and "Beaver Fur Blend," when the predominant fiber in the product so described was not "guanaco," "mink," or "beaver," respectively.

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

Mr. Frederick McManus for the Commission.

Mr. Jacob Landau, 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 Fur & Wool Mills, Inc., a corporation, Platt Wool Corporation, a corporation, Richard Becker and William Mond, individually and as officers of said corporations, S. Rosenfelder & Son, Inc., a corporation, and William Mond, individually and as an officer 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 Fur & Wool Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business on Chestnut Street in the City of Danbury, State of Connecticut. Individual respondents Richard Becker and William Mond are now and were, at all times hereinafter mentioned, officers of this corporate respondent. These individuals formulate, direct and control the policies, acts and practices of said corporate respondent and have their office and principal place of business at the same place as the corporate respondent.

PAR. 2. Respondent Platt Wool Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business on Chestnut Street in the City of Danbury, State of Connecticut.

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Individual respondents Richard Becker and William Mond are now and were, at all times hereinafter mentioned, officers of this corporate respondent. These individuals formulate, direct and control the acts and practices of said corporate respondent and have their office and principal place of business at the same place as the corporate respondent.

PAR. 3. Respondent S. Rosenfelder & Son, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business on Chestnut Street in the City of Danbury, State of Connecticut. Individual respondent William Mond is now and was, at all times hereinafter mentioned, an officer of this corporate respondent. This individual formulates, directs and controls the policies, acts and practices of this corporate respondent and has his office and principal place of business at the same place as the corporate respondent.

PAR. 4. The corporate respondents, separately and together, purchase fur scrap and pelts which are sent to the plant of Federal Fur Company, Inc., a corporation, also at Danbury, Connecticut, where the fur fibers are removed. Individual respondent William Mond is president of Federal Fur Company, Inc. Blends of fur fibers are made up by said company, after which they may be and are sold by one or all of the corporate respondents, regardless of which may have supplied the fur scrap and pelts. The separate respondents occupy the same premises in Danbury and are so closely related by stock ownership, common officers and business relationship that the acts and practices of one are the acts and practices of all.

The purchasers of said fur fibers consist largely of mills which use the same, together with other fibers, in the manufacture of yarns or fabrics.

PAR. 5. Respondents now cause, and for several years last past have caused, their fur fibers, when sold, to be transported from their place of business in the State of Connecticut to purchasers thereof located in various other States. Respondents maintain, and at all times mentioned herein have maintained, a constant and substantial trade in their fur fibers in commerce between and among various States of the United States.

PAR. 6. In the course and conduct of their business as aforesaid, respondents have made various statements concerning their products in invoices to purchasers. Among and typical, but not all inclusive of such statements, are the following: "Natural Guanaco," "Guanaco Fur Blend," "Mink Fur Blend" and "Beaver Fur Blend."

PAR. 7. Through the use of the description or designation "Natural Guanaco," respondents represented that the fur fiber so identified

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consisted of 100% guanaco; and through the use of the descriptions or designations "Guanaco Fur Blend," "Mink Fur Blend" and "Beaver Fur Blend," that the predominate fur fiber in the products so identified was guanaco, mink and beaver, respectively.

PAR. 8. The aforesaid statements or designations were false, misleading and deceptive. In truth and in fact, the fur fiber described and designated as "Natural Guanaco" consisted of a blend of fur fibers composed, in large part, of fur fibers other than guanaco and the predominate fiber in the fur fibers described and designated as "Guanaco Fur Blend," "Mink Fur Blend" and "Beaver Fur Blend" was not guanaco, mink and beaver, respectively.

PAR. 9. The use by respondents of the statements set forth in Paragraph Six had and now has the capacity and tendency to mislead and deceive substantial numbers of the aforementioned purchasers into the erroneous and mistaken belief that such statements were and are true and to induce such purchasers to misbrand the yarns and fabrics made by them in which said fur fibers were and may be used.

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

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents with violation of the provisions of the Federal Trade Commission Act in the sale in commerce of fur fibers largely for use, together with other fibers, in the manufacture of yarns or fabrics, by misrepresenting such fur fibers in invoices to purchasers thereof, thereby deceiving and inducing such purchasers to misbrand their yarns and fabrics, in the manufacture of which respondents' fur fibers are used.

After the issuance of the complaint, to which no answer was filed, respondents, their counsel, and counsel supporting the complaint entered into an Agreement Containing Consent Order To Cease And Desist, which was approved by the Director and the Assistant Director, Bureau of Litigation of the Commission, and thereafter transmitted to the Hearing Examiner for consideration.

The agreement states that respondent Fur & Wool Mills, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, and that respondents Platt Wool Corporation and S. Rosenfelder & Son, Inc. are corporations organized, existing and doing business under and by virtue of the laws of the State of New York; that individual respondents Richard Becker and William Mond are officers of corporate respondent-

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ents Fur & Wool Mills, Inc. and Platt Wool Corporation, and cooperate in formulating, directing and controlling the acts, practices and policies thereof; that individual respondent William Mond is also an officer of corporate respondent S. Rosenfelder & Son, Inc., and formulates, directs and controls the policies, acts and practices thereof; and that all respondents herein have their office and principal place of business on Chestnut Street, Danbury, Connecticut.

The agreement provides, among other things, that respondents admit all the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the complaint may be used in construing the terms of the order agreed upon, which may be altered, modified or set aside in the manner provided for other orders; that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint; and that the order set forth in the agreement and hereinafter included in this decision shall have the same force and effect as if entered after a full hearing.

Respondents waive any further procedural steps before the Hearing Examiner and the Commission, the making of findings of fact or conclusions of law, and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

The order agreed upon fully disposes of all the issues raised in the complaint, and adequately prohibits the acts and practices charged therein as being in violation of the Federal Trade Commission Act. Accordingly, the Hearing Examiner finds this proceeding to be in the public interest and accepts the Agreement Containing Consent Order To Cease And Desist as part of the record upon which this decision is based. Therefore,

It is ordered, That respondent Fur & Wool Mills, Inc., a corporation, and its officers; respondent Platt Wool Corporation, a corporation, and its officers; respondent S. Rosenfelder & Son, Inc., a corporation, and its officers; and respondents Richard Becker and William Mond, individually and as officers of Fur & Wool Mills, Inc., and Platt Wool Corporation; and William Mond, individually and as an officer of S. Rosenfelder & Son, Inc., and respondents' representatives, agents and employees, directly or through any corporate

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or other device, in connection with the offering for sale, sale or distribution of fur fiber products, or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Misrepresenting the constituent fibers of which their products are composed, or the percentages or amounts thereof, in sales invoices or in any other manner.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 31st day of May, 1956, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Fur & Wool Mills, Inc., a corporation, Platt Wool Corporation, a corporation, Richard Becker and William Mond, individually and as officers of said corporations, S. Rosenfelder & Son, Inc., a corporation, and William Mond, individually and as an officer of said corporation, 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.

IN THE MATTER OF
INTERNATIONAL ASSOCIATION OF PHOTOGRAPHERS
ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6165. Complaint, Feb. 5, 1954—Decision, June 1, 1956

Order requiring sellers in Hollywood, Calif., of photograph albums, together with certificates for photographs to be taken at independent affiliated studios, to cease representing falsely in advertising, on certificates sold to customers, and by statements of their salesmen that the person solicited had been specially selected, was to receive an album free, and was charged only for photographs; that their regular prices were promotional and reduced; that the photographs provided by the certificates were of natural gold-tone finish; and that they had arrangements with photographers all over the country who would honor the certificates; to cease obtaining signatures on order blanks on the pretense that they were receipts for free albums, and attempting to collect from the signers; and to cease representing falsely, through use of their corporate name, that their business was an international association of photographers.

Mr. W. J. Tompkins and Mr. Edward F. Downs for the Commission.

Arkin & Weissman, of Culver City, Calif., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

HISTORY OF THE PROCEEDING

On February 5, 1954, the Federal Trade Commission issued its complaint in this proceeding, charging the above-named respondents with violation of the Federal Trade Commission Act by the use of false, deceptive and misleading statements and representations in connection with the sale and distribution of photographic albums and certificates for photographs to be taken in independent studios in various States of the United States. On March 5, 1954, the respondents submitted their answer denying the principal charges of the complaint. In due course evidence both for and against those charges was duly received into the record, and proposed findings as to the facts and proposed conclusions were submitted.

IDENTITY AND BUSINESS OF RESPONDENTS

Respondents admit that respondent International Association of Photographers is a corporation organized and existing under and by virtue of the laws of the State of California, with its office and prin-

cial place of Business located at 1610 North Wilcox Avenue, Hollywood, California; that respondents Ray M. Mitchell, Frank Grzesiek, Raymond C. Ries, John Mason and Betty C. Mitchell, whose address is the same as the one just given, are individuals and officers of the corporate respondent; and that they direct and control the policies, acts and practices of the corporate respondent.

Respondents also admit that they are now, and for more than two years last past have been, engaged in the sale and distribution of photograph albums, together with certificates for photographs to be taken at independent affiliated studios; that in the course and conduct of their said business, respondents have caused their photograph albums, when sold, together with the certificates, to be transported from their place of business in the State of California to purchasers thereof located in various other States; that they maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce among and between the various States of the United States; that their volume of trade in said commerce has been substantial; and that they further engaged in commerce in that they transmit various instruments of a commercial nature to their customers located in States other than the State of California and receive from said customers instruments of the same nature.

The record shows that the respondents, in connection with and as a part of their business, have entered into agreements or understandings with a large number of photographic studios located in all or most of the States of the United States, whereby said studios have agreed to honor certificates for photographs to be taken by them and thereafter delivered to the purchasers of respondents' combination album and certificate. These certificates provide that the holders thereof are entitled to receive either ten or fourteen different 8 x 10 photographs of any member of their families, to be taken by the designated studio at the rate of two a year, at intervals of not less than ninety days.

In furtherance of the sale of respondents' album-certificate combinations, salesmen employed by respondents have called upon mothers of newly-born infants, whose names they have usually obtained from lists of births published in newspapers, and have solicited such mothers to purchase respondents' album-certificate combination.

The albums so offered were made either of plastic or leather. The plastic albums have been sold, together with a certificate for ten pictures, for \$39.95, and the leather albums have been sold, together with a certificate for fourteen pictures, for \$49.95.

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THE ISSUES

The complaint divides the alleged misrepresentations disseminated by the respondents into three kinds:

1. The alleged misrepresentations made by respondents or their sales agents to prospective purchasers;
2. The alleged misrepresentation of an order blank as a receipt for an album; and
3. The alleged misrepresentation inherent in respondents' use of the phrase "International Association of Photographers" as a corporate name.

In their answer respondents denied that they made some of the alleged representations, and the falsity of all representations they admit making. The issues are, therefore, whether respondents have made the alleged representations, and, if so, whether such representations are in fact false, misleading and deceptive. The determination of these issues requires detailed enumeration of the various representations in question, and a thorough analysis thereof in the light of the entire record. These representations are alleged in the complaint as follows:

REPRESENTATIONS MADE BY RESPONDENTS OR THEIR
SALES AGENTS TO PROSPECTIVE PURCHASERS

1. That the person solicited has been especially selected, was to receive an album free, and that the charge made was for the photographs.

This representation is alleged to be false in that prospective purchasers were not especially selected, and that the album was not free, the price thereof being included in the amount charged the customer for the combination deal of album and certificate.

Respondents admit that they have represented that the persons solicited had been especially selected, but maintain that they were so in fact, in that they are selected in a manner determined by respondents' salesmen, who, respondents contend, are independent dealers rather than agents of the respondents. They also admit that their album has at times been described to prospective purchasers as "free," but contend that all of the requirements concerning the purchaser thereof have been explained to the prospective purchasers before they signed an order blank, and, accordingly, no deception resulted.

All of the above contentions are without merit. The evidence shows that respondents' prospective purchasers were chosen because they belonged to the class of families who have young children and are therefore naturally interested in purchasing pictures of their children and an album to contain them. The names of such prospects were, in

most instances, secured from birth announcements published in newspapers. This basis of selection embraces such a large proportion of the purchasing public that the element of special selection, as that term would ordinarily be understood by a prospective purchaser, is not present, and its use in the instant connotation, therefore is deceptive.

The evidence shows, further, that respondents' salesmen presented both written and oral representations to prospective purchasers in the name of the corporate respondent. The literature, order blanks and certificates used in offering for sale and selling respondents' album-certificate combination were all furnished by and in the name of the corporate respondent. Payments were made by purchasers to the corporate respondent either indirectly, through the salesmen, or directly, by mail. Much of the profit made by respondents through the sale of their album-certificate combinations resulted directly from the efforts of these salesmen. Regardless, therefore, of the fact that respondents consider such salesmen to be independent contract dealers over whose representations respondents assert they have no control, respondents are responsible for all representations made by such salesmen in the process of offering for sale and selling respondents' album-certificate combinations.

No seller of a product can in justice furnish to others literature and order blanks bearing his name, creating thereby in the minds of prospective purchasers the impression that the person selling his product is his authorized sales representative, and thereafter, having enjoyed, through the efforts of such representative, a substantial volume of business, disclaim responsibility for any representation, either oral or written, by which such business was obtained. This principle has been repeatedly affirmed both by the Commission and by the courts.

The album, which is represented by respondents' salesmen as being free, is shown by the evidence not to be free in fact, because its cost is included as part of the price charged for the album-certificate combinations. Furthermore, the salesmen have, at the beginning of their conversation with the prospective purchaser, represented that the album is free, and have by that means gained admittance to the prospect's home. Later explanation of this misrepresentation to the prospective purchaser does not alter the fact that deception was earlier used to gain such admittance. Accordingly, it must be concluded that respondents' prospective purchasers are not especially selected; that the album is not given free; and that the two representations described above, for which respondents are responsible under the Federal Trade Commission Act, are false and misleading.

2. That the prices of \$39.95 and \$49.95 for the albums and certificates were promotional and reduced prices.

It is alleged that these prices were not promotional or reduced prices, but were the prices usually and customarily charged by respondents for their albums.

The evidence shows that these prices were termed "promotional" on respondents' order blanks, and that they were inferentially presented as reduced prices in respondents' correspondence, particularly in respondents' letters to purchasers acknowledging receipt of orders for the album-certificate combination, wherein respondents informed the purchaser that he was receiving, for \$39.95 or \$49.95, merchandise worth \$117.00 or \$159.50, as follows:

These ten separate portrait settings would regularly cost \$79.50, but with this you receive ten portraits and a Genuine Custom Made Album which has an established price of \$37.50. Total cost of this combination offer to you as stated in your contract is \$39.95, plus tax and \$1.00 delivery charges. This equals far less than the price of the portraits alone. * * *.

Respondents contend that their prices are promotional, and respondent Mitchell, in his testimony, states that they are reduced prices, because all the items comprising respondents' album-certificate combinations, including the photographs to be furnished by the various studios, would, if purchased separately, on the open market, cost more than \$39.95 or \$49.95. This contention is obviously fallacious. Respondents' prices cannot truthfully be said to be "reduced," since no one can reasonably claim that his price is a reduced price because it is less than someone else's price for a similar item. To be in fact a "reduced" price, the price must have been marked down from the seller's own former higher price. Nor can respondents' prices be truthfully said to be "promotional." They were not made as an introductory or promotional offer; in fact they were no more promotional than any price quoted with the expectation of making a sale. The evidence shows that the two prices at which respondents offer their two album-certificate combinations are the only prices at which these two combinations have been offered for sale; they are, therefore, respondents' usual and customary prices for such combinations, and are not in any sense "reduced" or "promotional."

Accordingly, it must be concluded that this representation is false, deceptive and misleading.

3. That the combination album-certificate deal was of the value of from \$117.00 to \$159.50.

This represented value is alleged to be fictitious because the amounts included for the photographs were in excess of the price charged therefor by photographers affiliated with respondents.

Respondents admit making the above representations as to the value of their album-certificate combination, but contend that such representation is true. Their contention is based on the theory, which is supported by uncontradicted evidence, that the average price of 8 x 10 photographs of comparable quality to those furnished under their certificate would, when added to the self-appraised value of their albums, equal the values of \$117.00 to \$159.50, as represented.

Counsel supporting the complaint does not question the self-appraised value of respondents' albums, or the arithmetical conclusion of the represented values. He contends, however, that since the values of the photographs, as represented by respondents, are based upon an average value of photographs throughout the country, they must include larger as well as smaller prices, so that, in some instances where lesser prices prevail, the represented values must be a misrepresentation. The question to be determined, however, is not whether the values represented by respondents are in some instances higher than the prices prevailing in a particular area, but whether they are, as alleged, fictitious.

Webster's New International Dictionary, 2nd Edition, Unabridged, defines "fictitious" as "feigned, imaginary, pretended—arbitrarily devised." In the light of all the evidence, it is clear that the represented values are not feigned, imaginary, or pretended, because they are based upon averages which approximate true values. There is no evidence in the record to show to what extent the price used as a criterion by respondents varies from the average, and therefore no basis for a conclusion that such variation was in fact substantial. In areas where the average price of photographs prevails, respondents' represented values are in accord with the facts; in areas where the price is higher than the average used by respondents, the variation is in favor of the prospective purchaser; and in areas where the price is lower, the degree of variation has not been shown.

Respondents' represented values cannot be said to be arbitrarily devised, since, according to testimony in the record, they result from a determination of average values of photographs over a considerable area, and were obviously arrived at by means of reasonable calculation based thereon, as distinguished from a random determination of values based on whim or caprice.

Accordingly, it must be concluded that this allegation, that respondents' represented values of \$117.00 to \$159.50 are fictitious, has not been sustained.

4. That Respondents have arrangements with photographers all over the country who will honor their certificates and that no matter where the holders

of certificates may reside during the time the certificates are in force a photographer who will honor the certificates will be readily available.

The above representation is alleged to be false because, although respondents have a large number of photographic studios who have contracted to honor their certificates, certificate-holders, as a matter of fact, have found, upon moving to another area, that there were no photographers readily available there who would honor the certificates they held.

Respondents admit that in some rare and exceptional instances certificate-holders have failed to find a convenient studio that would honor their certificates. The evidence shows that certain purchasers, upon moving to another area of the country, have failed to find a studio that would honor their certificates. Accordingly, it must be concluded that the above representation has the capacity and tendency to mislead and deceive some prospective purchasers.

5. That the photographs, to which a purchaser was entitled under the certificate, were of natural gold tone finish.

It is alleged that respondents represented that the photographs to which a purchaser would be entitled under the certificate were of natural gold tone finish, and that this representation is false, in that the photographs were not of natural gold tone finish, but were of ordinary sepia tone.

Respondents admit that in some instances the photographs furnished to the certificate-holders by the studios were not of natural gold tone finish. The evidence shows that the representation was made, as alleged, by the respondents within the period of time contemplated in the complaint. It must be concluded, therefore, that the above representation is false, misleading and deceptive.

THE PRACTICE OF OBTAINING SIGNATURES ON ORDER BLANKS BY
REPRESENTING TO PROSPECTIVE PURCHASERS THAT THE ORDER
BLANK IS A RECEIPT FOR AN ALBUM

It is alleged that respondents' sales agents, in some instances, have represented to prospective purchasers who appeared to be unwilling to purchase an album-certificate combination, but who had expressed a desire to accept an album free, that the album would be given them free, but to obtain it they must sign a receipt, which "receipt" was in fact a contract obligating the signer to purchase respondents' album-certificate combination. Having obtained the signature, the sales agent would thereafter make a notation on the signed order blank that a down-payment of \$5.00 had been made, and respondents would attempt to collect the balance of \$34.95 or \$44.95 on the "purchase" of the album-certificate combination.

It is alleged that such a practice by respondents constitutes an unfair and deceptive act and practice.

Respondents contend that their "independent dealers" did not engage in the above-described practice, and, conversely, that "* * * the corporate respondent penalizes the dealer who is guilty of such practice and * * * does all in its power to prevent this situation from reoccurring." Respondents further contend that "* * * where the customer informs respondent corporation that this had taken place that corporate respondent upon receiving a satisfactory proof that this is the true situation, cancels the said contract and does nothing further * * *" to attempt to collect the amount therein set forth.

The evidence in the record, as well as respondents' admission quoted above, clearly supports that part of the allegation relating to the obtaining of orders by the fraudulent use of an order blank as a "receipt" for a free album. Furthermore, the evidence shows that respondents have, on some occasions, attempted to collect the purchase price of the album-certificate combination on the basis of "orders" procured in the manner above described. Accordingly, it must be concluded that the above allegation has been sustained, and that such practice constitutes an unfair and deceptive act and practice.

THROUGH THE USE OF THE CORPORATE NAME, INTERNATIONAL ASSOCIATION OF PHOTOGRAPHERS, RESPONDENTS HAVE REPRESENTED THAT THE CORPORATE RESPONDENT IS AN ASSOCIATION OF PHOTOGRAPHERS ORGANIZED UPON AN INTERNATIONAL BASIS

It is alleged in the complaint that through the use of the corporate name "International Association of Photographers," respondents represent that the corporate respondent is an association of photographers organized on an international basis. This representation is alleged to be false in that said corporation is not an association, nor is it engaged in the photographic business upon an international scale or otherwise, but is engaged primarily in the sale of photograph albums for profit.

The evidence shows that respondent corporation is a corporation organized primarily for the purpose of engaging in the sale and distribution of photograph albums, in combination with certificates which entitle the purchaser to receive a number of photographs, within a designated period of time, from various photographic studios who are under contract to respondent corporation to honor said certificates whenever and wherever presented. Respondents have been actively engaged in this business. By means of this sales plan, respondents promote the sale of photographs by the studios under contract with them, and at the same time promote their own sale of

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albums. Respondent corporation was created to be a profit-making organization, and any "improvements" that it may bring to the photographic industry are incidental to its primary purpose of making a profit. The evidence shows, further, that the direction and control of the corporate respondent is vested in its officers, and not in the so-called "member" studios, which have no voice in the selection of such officers nor in the determination of the policy and practices of the corporate respondent. The photographic studios under contract with the corporate respondent are not brought together at meetings or otherwise for the mutual exchange of ideas relative to photography. The legal obligation which they have undertaken, that of honoring respondents' certificates, when presented, by furnishing photographs to respondents' customers, and thereby gaining an opportunity to sell additional photographs on their own account to those customers, does not in fact constitute any "association" whatever between or among the photographic studios under contract to respondents; and the only "association" of any kind whatever between respondents and the photographic studios is the narrow, contractual one of promoting sales of photographs for mutual profit.

It must be concluded, therefore, that respondents' use of the corporate name "International Association of Photographers" is false, misleading and deceptive.

CONCLUSION

In the light of the above analysis, this proceeding is found to be in the interest of the public. It is further found that the acts and practices of the respondents hereinabove concluded to be false, misleading and deceptive have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such acts, statements, representations and practices are true and to induce the purchasing public to purchase substantial quantities of respondents' album-certificate combinations as a result of such erroneous and mistaken belief; that such acts and practices 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

Wherefore, the premises considered, an order to cease and desist is issued, as follows:

It is ordered, That respondents International Association of Photographers, a corporation, and its officers, and Ray M. Mitchell, Frank Grzesiek, Raymond C. Ries, John Mason and Betty C. Mitchell, indi-

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vidually, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of photograph albums or certificates for photographs, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication—
 - (a) that they sell only to selected persons;
 - (b) that their albums are given free or without cost;
 - (c) that the prices at which they regularly or customarily sell their products are reduced or promotional prices;
 - (d) that the photographs provided by respondents' certificates are of natural gold tone finish;
2. Misrepresenting the number and availability of photographers who will honor certificates issued by respondents;
3. Obtaining signatures on order blanks upon the pretense that they are receipts for free albums, or attempting to collect from the persons who may have signed such blanks;
4. Using the corporate name "International Association of Photographers," or any other name of similar import to designate, describe or refer to respondents' business, or otherwise representing that their business is an association, international or otherwise, of photographers.

OPINION OF THE COMMISSION

By GWYNNE, Chairman:

Respondents (a corporation and individual officers thereof, who admittedly direct and control its policies, acts and practices) are charged with unfair and deceptive acts and practices in commerce in violation of the Federal Trade Commission Act. It is admitted that respondents are engaged in commerce; that they sell and distribute photograph albums, together with certificates for photographs to be taken at independent studios with whom respondents have previously made arrangements. Selling is done through "dealers" who are in effect salesmen selling by personal solicitation.

The hearing examiner found against the respondents as to all alleged misrepresentations, except "that the combination album-certificate deal was of the value of from \$117 to \$159.50." Respondents appeal.

The alleged misrepresentations involved in this appeal are:

- (1) That the person solicited has been especially selected, was to receive an album free, and that the charge was made for the photographs.

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(2) That the prices of \$39.95 and \$49.95 for the album and certificates were promotional and reduced prices.

(3) That respondents have arrangements with photographers all over the country who will honor their certificates and that no matter where holders of certificates may reside during the time the certificates are in force, a photographer who will honor the certificates will be readily available.

(4) That the photographs to which a purchaser was entitled under the certificate were of natural gold tone finish.

(5) That signatures are obtained on order blanks by representing to prospective purchasers that the order blank is a receipt for an album.

(6) That through the use of the corporate name, International Association of Photographers, respondents have represented that the corporate respondent is an association of photographers organized upon an international basis.

1. Selection of Prospects and Gift

Part of respondents' answer is "that they state that the persons have been especially selected and in truth and in fact the persons solicited are especially selected but the selection is made by the franchised dealers who sell the album-portrait plan."

It is not disputed that names of prospects are secured from birth records kept by hospitals, clinics and similar sources. The sales force, sometimes with the assistance of the studio operator, further narrows the list by giving consideration to such facts as the number of children, location of the home, parents' economic status, etc. The method followed is for the purpose of securing good prospects and for the benefit of the seller rather than the purchaser.

The Commission recently considered a similar situation in the matter of General Products, Docket 6211, and what we said there is applicable here. We agree with the finding of the hearing examiner that the representation of special selection, as made in this case, has the capacity and tendency to deceive.

Admitting that the album has at times been described as "free," respondents nevertheless insist that all the requirements have been explained prior to the purchase and that the free goods rule, as laid down in the *Black* case, Docket 5571, has not been violated.

Such contention is not supported by the evidence. Several witnesses testified they were told they were to receive a gift and were not advised that there was any obligation on them, such as agreeing to pay for photographs.

Nor can it be said that the album was, in fact, free. Respondents sell for a stated amount an album and certificates entitling the purchasers to have photographs taken by a local studio. All the money collected goes to respondents. The studio pays no dues nor commission to respondent, and is interested in the plan largely because of its promotional and advertising value. The real interest respondent has in the scheme is the sale of its property, the album.

As to the various claimed misrepresentations made by salesmen, respondents point out that they do not control the details of their dealers' or salesmen's daily operations. They do, however, furnish the supplies, order blanks, etc. Contracts are made by the purchaser with the respondents and most of the payments are made to them. According to the contract, salesmen are paid a profit which is really a commission.

The facts here are similar to those in *Perma-Maid Company v. FTC*, (1941) 121 F. 2d 282, where the acts of selling agents were held to be within the scope of their employment and the respondent must assume full responsibility therefor.

2. Reduced and Promotional Prices

Respondents' literature asserts that the quoted prices of \$39.95 and \$49.95 are promotional and reduced prices. In their answer, respondents admit the representation as to reduced and promotional prices and "further state that in truth and in fact, the prices for which the said albums and certificates are sold are reduced rates in that by comparison with the retail selling price of the said album plus the average retail price of the number of portraits to which the purchasers are entitled, far exceed the prices for which the albums and certificates are sold."

That is, the value, if the purchaser avails himself of the certificate, is greater than the purchase price. Nevertheless, the \$39.95 and \$49.95 are the charges regularly made by respondents; it appears they never sold at different prices. Nor are these prices special prices made for a special occasion or for a particular purpose.

The terms "reduced prices" and "promotional prices" are frequently used and have acquired an established meaning to the ordinary prospective buyer. They mean that the seller formerly sold the article at a certain price and that now he is selling it at a lesser price. It is not the statement of an opinion, such as often exists when reference is made to value, it is a statement of fact that invites comparison between a former price and a present lesser price.

The complaint did make a charge having to do with value, to wit, that the combination album-certificate deal was of the value from

\$117 to \$159.50. As to that, the hearing examiner found the evidence insufficient to support an order.

The use of the terms "reduced" and "promotional" do not clearly describe the respondents' pricing policy and have the capacity and tendency to deceive.

3. That the respondents have arrangements with photographers all over the country who will honor the certificates and that no matter where the holders of certificates may reside during the time the certificates are in force, a photographer who will honor these certificates will be readily available

Respondents object to the following finding of the hearing examiner as not being supported by the evidence: "The evidence shows that certain purchasers, upon moving to another area of the country, have failed to find a studio that would honor their certificates."

We do not find any evidence to support that finding. There is, however, evidence to the effect that one salesman said: "You can go into any studio around and get the photographs"; that one purchaser, after having three photographs taken, discovered that the designated studio had cancelled its contract with respondents and the nearest studio representative was in another city some 12 miles distant; that another customer was told that respondents had studio representatives in different cities and "most principal cities, I believe she said, and if I ever moved, that I could have them take it, you know, just about anywhere. I don't believe she told me that they had them in every city, but pretty near." Respondent Ray M. Mitchell testified there were about 700 member studios located in practically all the states and in some foreign countries. It also appears that the contracts for pictures are transferrable and that a purchaser moving to a new location may have the contract completed by another studio member and that in case none can be found, the purchaser may send in a negative for enlargement by respondents. It appears, however, that this information was ordinarily given to the purchaser after the signing of the order.

We find that there were misrepresentations as to the number and availability of photographers who will honor certificates issued by respondents and that the order of the hearing examiner in that respect is proper.

4. That the photographs were of natural gold tone finish

At least three certificates introduced into evidence refer to the portraits to be furnished as "in natural golden tone finish". The testimony of the respondent Mitchell was to the effect that respondent-

ents once used the term "gold tone" in their certificates. "Then later, because we found out that there had been some kind of controversy on gold tone through the Better Business Bureau, we changed it to 'golden tone.'" Still later "we changed it to 'tone' portrait, to have the photographer determine whatever type of developer he used." The reference "natural golden tone" was used in 1947 and 1948 and customers were not getting that in some cases.

Although the record on this phase of the case is not too satisfactory, we see no reason for interfering with the finding and order of the hearing examiner.

5. Obtaining signatures on order blanks by deceptive means

Several witnesses testified that they signed a document presented by the salesman and represented by him to be simply a receipt, the signing of which was necessary to secure the album as a gift.

These documents, which were in fact order blanks, were sent to the respondents with a notation that the purchaser had paid \$5.00 on account, when, in some cases, nothing or a lesser amount was actually paid. There is evidence that respondents tried to collect the amounts claimed to be due and on occasion utilized the services of a collection agency. When collections were disputed and the alleged purchaser would sign a notarized statement setting out the facts, the matter would be dropped.

Respondents claim they disapproved of this practice and imposed penalties on their salesmen who engaged in it. They also claim that the instances complained of were unauthorized acts of their salesmen which they tried to prevent, and that, in any event, the facts do not indicate that it was "a practice" of respondents. Nevertheless, the acts disclosed in the evidence are sufficient to warrant the finding and order entered by the hearing examiner. *Fox Film Corporation v. FTC*, (1924) 296 F. 353. *Gimbel Brothers, Inc. v. FTC*, 116 F. 2d 578.

6. Misrepresentation based on the use of the corporate name International Association of Photographers

The above-named is a corporation organized for profit. The articles of incorporation are not in evidence. The business was formerly owned and operated by Ray M. Mitchell, president of the corporation, as sole proprietor. When the corporation was created, he sold the business to the corporation in exchange for stock.

It does not appear that the studio owners own stock, or have any rights in or control over the corporation, except as contained in their individual contracts with the corporation, a copy of which is in evidence.

Order

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Under their agreements, the studio owners agree to honor the certificates sold by respondents and to furnish photographs and proofs in accordance therewith. The corporation agrees to act as good-will ambassador for the studio owners, to deliver albums as provided, to furnish the studio certain merchandise, and to sell other merchandise at prices which are claimed to effect considerable savings. No meetings of the cooperating studios have ever been held. There are no dues and no reports. Either party may cancel the contract "with cause" on 90 days' written notice.

Several studio owners having contracts with the corporation testified that they selected the dealers and at least helped select the prospects. One described the organization as a very good membership of studios who have a working merchandising plan. Respondent Ray M. Mitchell testified that the main business was selling portrait plans or programs.

We have no doubt that the working arrangement between the corporation and studio owners had elements of potential advantage for both. Nevertheless, it cannot be described as an association of photographers as that term would be normally understood. The corporation was obviously owned and controlled by a few people and its principal source of profit was the sale of albums to the public. The arrangement with the studios was for the purpose of furthering the sale of albums. That the name would have a tendency and capacity to deceive is indicated by the fact that some customers testified they understood they were doing business with an organization of photographers.

Except as modified herein, the findings, conclusions and order of the hearing examiner are adopted as the findings, conclusions and order of the Commission. The appeal of respondents is denied and it is directed that an order issue accordingly.

FINAL ORDER

The respondents in this proceeding having filed their appeal from the initial decision of the hearing examiner; and the matter having been heard on briefs and oral arguments of counsel; and the Commission having rendered its decision modifying the findings contained in the initial decision and adopting as its own decision the initial decision as so modified:

It is ordered, That to the extent noted in the accompanying opinion the respondents' appeal be, and it hereby is, granted. In all other respects, said appeal is hereby denied.

It is further ordered, That the respondents, International Association of Photographers, a corporation, and Ray M. Mitchell, Frank

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Order

Grzesiek, Raymond C. Ries, John Mason, and Betty C. Mitchell, individuals, 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 contained in the aforesaid initial decision.

IN THE MATTER OF

MITCHELL S. MOHR TRADING AS NATIONAL RESEARCH
COMPANY AND SYDNEY FLOERSHEIM TRADING AS
S. FLOERSHEIM SALES COMPANYORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 6236. Complaint, Oct. 11, 1954—Decision, June 1, 1956*

Order requiring two individuals engaged in selling printed mailing forms for use of collection agencies and merchants in obtaining information concerning debtors, to cease using on printed forms, mailed from Washington, D. C., the terms "Claims Office," "Reverification Office," and "United States Credit Control Bureau," and particularly the words "United States" and the picture of an eagle similar to that on the United States seal, representing falsely thereby that their requests for information came from an agency of the United States Government; to cease stating falsely in said "Claims Office" and "United States Credit Control Bureau" forms that certain amounts of money were "collectible" and "due" the addressee; and to cease representing falsely through use on other printed forms of the terms "Cigarette and Tobacco Research Bureau" and "National Gasoline Research Bureau," together with the nature of the inquiries on the forms, that they represented research projects.

Mr. Michael J. Vitale for the Commission.

Mr. Murray M. Chotiner, of Beverly Hills, Calif., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

THE COMPLAINT

The Respondents herein are charged with violating the Federal Trade Commission Act by engaging in unfair and deceptive acts and practices in commerce, through the dissemination of deceptive printed forms designed to entice defaulting debtors to furnish certain information about themselves.

The complaint, which was issued on October 11, 1954, alleges that the respondents, through the use on certain printed forms of the terms "Claims Office," "Reverification Office" and "United States Credit Control Bureau," and particularly through the use of the words "United States" and a picturization of an eagle similar in design to that appearing on the seal of the United States Government, represent and imply to those to whom such forms are mailed that the requests for information contained therein emanate from an agency of the United States Government. Such implication, it is alleged, is enhanced by the fact that respondents mail such forms in