

Decision

IN THE MATTER OF
COLOR ART STUDIOS, INC., ET AL.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION ACT*Docket 6841. Complaint, July 15, 1957—Decision, Mar. 18, 1958*

Order requiring a seller in Washington, D.C., of photographs and color portraits made from color film transparencies and negatives, to cease representing falsely that his portraits were natural color, that the finished products would be equal in quality to samples exhibited, and that they were guaranteed to "look like proofs" and that if they did not, he would remake them.

Mr. Edward F. Downs and *Mr. Garland S. Ferguson* for the Commission.

Mr. Francis E. Jordan, of Washington, D.C., for respondents.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

INTRODUCTORY STATEMENT

The complaint in this case was issued July 15, 1957, against Ralph D. White, an individual trading as Color Art Studios, with his principal place of business located at 4435 Wisconsin Avenue NW., Washington, D.C. During the course of the taking of testimony, it was developed that respondent Color Art Studios, Inc. was organized under the laws of the District of Columbia and the articles of incorporation were filed December 28, 1956. On October 11, 1957, counsel in support of the complaint made a motion on the record to amend the complaint in this matter to include Color Art Studios, Inc., and Ralph D. White, individually and as an officer of Color Art Studios, Inc. No objection was made by counsel for respondents, and the Examiner ruled that the complaint be amended to that effect. Subsequently, on December 30, 1957, an order was entered amending the complaint accordingly. The present address of respondents is 5534 Connecticut Avenue NW., Washington, D.C.

Proposed findings and conclusions were submitted by counsel for both sides, oral argument was heard thereon, and the hearing examiner's rulings thereon are implicit herein.

FINDINGS OF FACT AND LAW

1. Respondent Ralph D. White, as an officer of respondent corporation, formulates, directs, and controls the policies and practices of the corporate respondent. Since December 1956, respondents have been engaged in the sale and distribution of photographs and color portraits made from color film transparencies and negatives. Although respondent White does some work in his studio, the majority of respondents' business comes from photographs taken in the homes of prospective purchasers located in the District of Columbia and in the States of Virginia and Maryland. On the average, during the past year, approximately 1,000 sittings per month have been made by respondents, who cause their portraits and photographs to be transported from their place of business to purchasers located as aforesaid. They maintain, and at all times herein mentioned have maintained, a course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

2. At all times herein mentioned, respondents have been in direct and substantial competition with individuals and firms likewise engaged in the sale and distribution of portraits and photographs in commerce in Washington, D.C., and in the States of Maryland and Virginia.

3. Said respondents, in the course and conduct of their said business, cause their agents or representatives to call prospective purchasers on the telephone and arrange for respondents' photographers to visit the homes of such prospective purchasers, where they take a number of poses of the subjects to be photographed. Usually after the exposed films have been processed into proof slides, they are exhibited to the prospective purchaser by other representatives of the respondents with special projection equipment which displays the color-film transparency on a screen or other light surface so that the picture thus viewed portrays the natural colors of the subject, including complexion, hair, and clothing. Following the exhibition of the proof slides, respondents' agent shows samples of finished prints or portraits of other subjects, and attempts to induce, and often does induce, such customer to place an order for the purchase of color prints or portraits to be made from the proof transparencies thus displayed.

4. Said respondents, by and through oral statements made by their agents or representatives soliciting by telephone as aforesaid, by the photographers and other representatives taking the original pictures,

by the agents exhibiting the proof transparencies of the subject and prints and portraits as aforesaid, and by and through the use of order blanks, receipts, and other literature used by respondents and their agents and representatives, have represented, directly or by implication, (1) that the portraits sold by them are natural-color portraits; (2) that the finished portraits sold by them will be equal in appearance, quality, and workmanship to the proof transparency and sample prints and portraits exhibited to purchasers and prospective purchasers; and (3) that the finished portraits are guaranteed to "look like proofs" and, if they do not, respondents will remake them.

5. The aforesaid representations are false, deceptive and misleading in many respects. In truth and in fact:

(1) The portraits sold by respondents are not natural-color portraits in that they do not accurately portray the true color of the eyes, hair, clothing, and complexion of the persons photographed. Thus the finished portraits do not portray the natural color that purchasers, when they view the proof transparencies, are led to believe they will receive. There is always some loss of color values and intensities in making a color print from the proof transparency. The reason for this is that in looking at the transparency the colors are portrayed with direct light and the viewer gets the full intensity and full brilliance of such colors. On the other hand, when a print is made from a transparency, there is some loss in color values and intensities for the reason that the print itself cannot be as brilliant as the transparency because of the light absorption in the process. "You hold the transparency up to the light and project it on the screen, the light goes through and projects all the colors very vividly. In the print, the print is viewed by reflected light" (Tr. 57).

(2) The portraits or prints sold by respondents are often inferior to those which the purchasers and prospective purchasers are led to believe they will receive as a result of viewing the proof transparencies and the sample portraits or prints exhibited by agents of the respondents. Not only are the finished prints less brilliant and colorful than the samples and transparencies viewed by the purchasers, but, in many respects, there is a distortion of colors in the finished print or portrait. Often, when the transparency is processed, an attempt is made to filter out certain colors in order to obtain a more natural flesh tone. In so doing, other colors in the finished photograph are changed. It is generally conceded by experts in this industry that the printing process for color film has not yet been perfected so that natural colors can be reproduced.

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(3) Many of the portraits delivered to customers of respondents are unsatisfactory in that they do not look like the proof transparencies from which they were made. In some instances respondents do not honor their guaranty by remaking such unsatisfactory portraits to the customer's satisfaction. In this connection, however, it is found that as a general policy respondent White has attempted to live up to his guaranty, and has in many respects remade pictures to meet the complaints of customers. There is also uncontradicted testimony in the record that respondent White has taken step to correct the false and misleading representations herein found, insofar as it is possible for him to do so.

6. The use by respondents of the foregoing false, misleading, and deceptive statements and representations has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and to induce the purchasing public to buy substantial quantities of respondents' products as a result of such erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors, and substantial injury has been done to competition in commerce.

CONCLUSION

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

ORDER

It is ordered, That respondent Color Art Studios, Inc., a corporation, and its officers, and Ralph D. White, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device in connection with the offering for sale, sale, or distribution of portraits or photographs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication,

(1) that the portraits or photographs sold by said respondents are of natural color;

(2) that the finished portraits or photographs sold by said respondents will be equal in appearance, quality or workmanship to

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the proof transparencies or sample portraits exhibited to purchasers or prospective purchasers;

(3) that the photographs or portraits sold by respondents are guaranteed in any manner, unless all of the terms and conditions of such guaranty are fully set forth in connection therewith.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission having considered the initial decision of the hearing examiner filed January 30, 1958, as corrected by his order filed February 20, 1958; and

It appearing that, through inadvertance, the word "Inc." was inserted after the word "Studios" in the third line of the introductory statement in the said initial decision; and

The Commission being of the opinion that this clerical error should be corrected:

It is ordered, That the third line of the introductory statement in the initial decision be, and it hereby is, modified to read as follows:

Studios, with his principal place of business located

It is further ordered, That the initial decision as so modified shall, on the 18th day of March 1958, become the decision of the Commission.

It is further ordered, That the respondents, Color Art Studios, Inc., a corporation, and Ralph D. White, 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 contained in the initial decision, as modified.

IN THE MATTER OF
HELENE CURTIS INDUSTRIES, INC.

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

Docket 6856. Complaint, July 26, 1957—Decision, Mar. 18, 1958

Consent order requiring cosmetic manufacturers with principal place of business at Chicago, Ill., to cease advertising falsely in newspapers and by television and otherwise that their "Enden Shampoo" would cure dandruff.

Mr. John T. Walker supporting the complaint.

Mr. Allen D. Choka, of Chicago, Ill., for respondent.

INITIAL DECISION OF JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on July 26, 1957, charging it with the use of unfair and deceptive acts and practices in commerce, in violation of the Federal Trade Commission Act, by falsely advertising its product, Enden Shampoo, as a cure for dandruff. After being served with said complaint, respondent appeared by counsel and filed its answer thereto. Thereafter the parties entered into an agreement dated January 20, 1958, containing a consent order to cease and desist purporting to dispose of all of this proceeding as to all parties. Said agreement, which has been signed by respondent, by counsel for said respondent, and by counsel supporting the complaint, and approved by the director and assistant director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with section 3.25 of the commission's rules of practice for adjudicative proceedings.

Respondent, pursuant to the aforesaid agreement, has admitted all the jurisdictional facts alleged in the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that respondent waives 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 it may have to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has been agreed that the order to cease and desist issued in accordance with said