

IN THE MATTER OF
BANKERS LOAN COMPANY, INC., ET AL.

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

Docket 7858. Complaint, Apr. 6, 1960—Decision, Sept. 7, 1960

Consent order requiring Fort Worth, Tex., distributors of photographs and related products—selling chiefly through door-to-door salesmen who concentrated on selling photograph albums and used two basic plans: one offering a certain number of portraits to be taken by a local studio participating for advertising purposes, and the other offering a given number of "snapshot enlargements" of various sizes—to cease representing falsely that the albums regularly sold for \$47.50 and the enlargements for \$5.00 each, that they were offering a free gift in an advertising campaign to specially selected persons, had developed a new photographic process and operated their own processing plant; representing falsely that "Bankers Loan Company, Inc."—actually a corporate device used to intimidate purchasers—was an innocent purchaser of delinquent accounts; and coercing delinquent debtors by forwarding to them a document styled "Notice to Debtor Collection Proceedings" which represented falsely that the claim had been reduced to a judgment and the notice constituted a court order requiring payment of the amount allegedly owed.

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 Bankers Loan

Company, Inc., a corporation, and Minnie M. Kirton, G. Fred Davis and Sybil Kirton, individually and as officers of said corporation, and as copartners doing business as National Photographers Album Company, 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 Bankers Loan Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas. Respondents Minnie M. Kirton, G. Fred Davis and Sybil Kirton are individuals and are officers of said corporate respondent and trade and do business as copartners under the name of National Photographers Album Company. These individuals formulate, direct and control the policies, acts and practices of the corporate respondent.

Respondents' office and principal place of business is located at 3605 Dexter Street, in the city of Fort Worth, State of Tex.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of photograph albums, photographs, photograph certificates and photograph enlargements to the ultimate consumer.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of Texas to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintain and at all times mentioned herein have maintained a substantial course of trade in said products, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

In furtherance of their aforesaid business and in addition to the foregoing products respondents also now cause, and for some time last past have caused, contracts, collection demands to delinquent debtors and various other kinds and types of documents relating to the aforesaid business to be deposited in the United States mails and transmitted to and received from persons located in the various other States of the United States and in the District of Columbia, all of which thereby constituting and being a part of the course of trade in commerce heretofore mentioned.

PAR. 4. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of photograph albums, photographs, photograph certificates and

photograph enlargements of the same general kind and nature as those sold by respondents.

PAR. 5. Respondents' said products are sold chiefly by itinerate door-to-door salesmen. Salesmen are furnished with manuals, contract forms, "canned sales talks," and a sales kit containing photographs and various other materials needed to effect a sale. The contracts with purchasers of said products are entered into in the name of the National Photographers Album Company. Collection of the account and all further contacts with the purchaser subsequent to the sale are maintained by respondents. The terms and the requirements of the contract are determined by respondents. Most salesmen work under and are responsible to a crew chief. Respondents receive a portion of the purchase price of each sale made by its salesmen.

The "canned sales talks" provided by respondents to their salesmen are used either literally or, as expedient, varied to effect a sale of said products. Numerous representations are thereby made by the salesmen respecting the respondents' status, its product, financing of the product, regular selling price of said product and numerous other representations hereinafter more specifically related.

As aforesaid, contracts are taken in the name of the National Photographers Album Company. In the event that an account becomes delinquent, it is handled under the name of the Bankers Loan Company, Inc. The Bankers Loan Company, Inc., holds itself out to the delinquent debtor as a bona fide collection agency doing a general business which has given a valuable consideration for the account.

The National Photographers Album Company, Inc., was incorporated in the State of Texas. Its name was subsequently changed to Bankers Loan Company, Inc.

Respondents' primary effort is to sell the photograph album. As an inducement respondents offer two basic separate plans with variations. One plan offers to the purchaser a specified number of portraits to be taken by a local studio. The local studio usually enters into this arrangement with respondents for advertising purposes. The other plan affords to the purchaser the opportunity of having a specified number of "snap shot enlargements" made for which there is a charge depending upon the size and kind of enlargement desired.

PAR. 6. The "canned sales talks" provided by respondents to its salesmen contain numerous representations respecting free gifts, advertising, photograph processing, respondents' photographic facilities, price of the photograph album, price of the photograph enlargements, special selection of prospective purchaser and other rep-

representations. Typical and illustrative of the foregoing are the following:

I have a very unusual and valuable surprise for you and your family.

Mrs. Jones, I do the local advertising for National Photographers . . . National Photographers has developed a new process in photography and to advertise it, . . .

Mrs. Jones, I've been retained to do the advertising locally for the National Photographers Company . . . National has recently developed a new process in photography . . . To go along with this new process, we have developed a new method of advertising the process. . . . So, I visit 8 mothers each day and out of those, I qualify to assist us in advertising, 4 mothers.

(BRING OUT THE ALBUM . . .) its the most expensive one on the AMERICAN MARKET. It retails through leading retail outlets at \$47.50.

Your Book Of Certificates entitles you to 50—\$5.00 portraits (multiply it). Making a retail value of \$250.00. The album retails for \$47.50 because it is Top Grain Cow Hide. (Total up \$297.50.) This makes a total retail value of \$300.00.

The foregoing representations are repeated, modified or altered in any manner which may be expedient for the salesmen to effect a sale of said products and various other representations are also made.

PAR. 7. Through the foregoing statements and representations made on their sales contract, on the certificates issued to their customers, and by means of other statements made by their sales representatives, respondents have represented and now represent, directly or indirectly:

1. That a free gift is being offered to the persons solicited.
2. That respondents are conducting an advertising campaign.
3. That respondents have developed a new process for making photographs.
4. That respondents own, operate or control a photograph processing plant or facilities.
5. That the photograph album has a regular retail selling price of \$47.50 or more.
6. That the photograph enlargements offered for sale and sold by respondents have a regular retail selling price of \$5.00 each.
7. That persons solicited have been specially selected.

PAR. 8. The aforesaid representations are false, misleading and deceptive. In truth and in fact:

1. Respondents do not offer or otherwise make available to or present persons solicited with a free gift.
2. Respondents are not conducting an advertising campaign. Respondents' purpose is to sell their said products and services.
3. Respondents have not developed a new process for making or enlarging photographs.

4. Respondents do not own, operate or control a photograph processing plant or facilities for making or enlarging photographs.

5. The photograph album offered for sale and sold by respondents does not have a regular retail selling price of \$47.50 or more.

6. The photograph enlargements offered for sale and sold by respondents do not have a regular retail selling price of \$5.00 each.

7. Persons solicited by respondents' salesmen have not been specially selected.

PAR. 9. To effect the collection of delinquent accounts, respondents represent and imply that the delinquent account has been purchased by a bona fide collection agency separate from the National Photographers Album Company. Typical and illustrative of such representations is that contained in certain letters mailed to the delinquent debtor on the letterhead of respondent Bankers Loan Company, Inc., which reads in part: "This is to notify you that we, the Bankers Loan Company, Inc., have purchased your contract account from the National Photographers Album Company of Ft. Worth, Texas."

Such representations are false, misleading and deceptive. Respondent Bankers Loan Company, Inc., is simply a corporate device used by the individual respondents to coerce and intimidate purchasers of their said products and services. Through and under said false and fraudulent device, respondents seek to effect the collection of delinquent accounts by representing and implying that the respondent Bankers Loan Company, Inc. is an innocent purchaser of the delinquent account.

PAR. 10. Respondents also forward to the delinquent debtor, among other things, a document styled "Notice to Debtor-Collection Proceedings" which represents that the claim has been reduced to a judgment and that the said notice constitutes an order by a court of competent jurisdiction requiring the delinquent debtor to pay the amount allegedly owed to the respondents.

Said delinquent accounts have not in fact been reduced to a judgment. Said "Notice to Debtor" is wholly spurious and constitutes a false, misleading and deceptive effort on the part of the respondents to coerce and intimidate delinquent debtors.

PAR. 11. The use by respondents of the aforesaid false, misleading and deceptive statements and representations has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were and are true and into the purchase of a substantial number and amount of the aforesaid photograph albums, photographs, photograph certificates and photograph enlargements by such erroneous and mistaken be-

lief. As a result thereof, trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has been done and is being done to competition in commerce.

Mr. Terral A. Jordan for the Commission.

Mr. Wilbur N. Baughman, of Washington, D.C., and *McGown, Godfrey, Logan & Decker*, of Fort Worth, Tex., for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

Respondents are charged with violation of the Federal Trade Commission Act in connection with the sale of photographs and related products. An agreement has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and 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.

The hearing examiner having considered the agreement and proposed order and being of the opinion that they provide an adequate basis for appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. Respondent Bankers Loan Company, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Texas. Respondents Minnie M. Kirton, G. Fred Davis, and Sybil Kirton are individuals and are officers of the corporate respondent. They also trade and do business as copartners under the name of National Photographers Album Company. Respondents' office and principal place of business is located at 3605 Dexter Street, Fort Worth, Tex.

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2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That Bankers Loan Company, Inc., a corporation, and its officers and Minnie M. Kirton, G. Fred Davis and Sybil Kirton, individually and as officers of said corporation, and as copartners trading and doing business under the name of National Photographers Album Company or trading and doing business under any other name or names whether jointly or separately, 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 photograph albums, photograph certificates, photographs or photograph enlargements, or any other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly:

- (a) That a free gift is offered to persons solicited.
- (b) That an advertising campaign, an introductory promotional offer, or any other kind of survey, campaign or promotion is being conducted unless such is the fact.
- (c) That respondents have developed new or different processes, techniques or methods for making photographs.
- (d) That respondents own, operate or control a photograph processing plant or facilities.
- (e) That any amount is the regular retail selling price of a specific article of merchandise when it is in excess of the price at which said article of merchandise is usually and customarily offered for sale or sold in the trade area in which offered for sale.
- (f) That persons solicited are specially selected.
- (g) That Bankers Loan Company, Inc., is an independent or separate organization from the said business enterprise operated under the name of National Photographers Album Company or is a bona fide purchaser for value of the contracts, accounts receivable or promissory notes executed by purchasers of the aforesaid products; or that any collection agency is an independent or separate organization or a bona fide purchaser of contracts, accounts receivable or promissory notes executed by purchasers of the aforesaid products when in fact it is owned, operated or controlled by respondents.
- (h) That any amount owed by purchasers of the aforesaid products has been reduced to a judgment; or that any other legal action

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has been taken to effect collection of amounts owed by delinquent debtors, unless such action has in fact been taken.

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 7th day of September 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.
