

Complaint

57 F.T.C.

IN THE MATTER OF
CLARK H. GEPPERT ET AL. TRADING AS DEAN STUDIOS

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

Docket 8024. Complaint, June 27, 1960—Decision, Sept. 29, 1960

Consent order requiring a partnership in Des Moines, Iowa, engaged in developing film and enlarging, tinting, and framing photographs, to cease using deceptive promotional schemes to sell its photographic services and products, specifically, purported puzzle contests—so easy to solve that anyone could “qualify” and “win” but then was required to sell respondents’ products to 20 others before receiving the “real, live Miniature” dog or monkey offered as prize—which were thus used as “bait” to get names of persons who might sell respondents’ services and products.

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 Clark H. Geppert, Byron Geppert and Fidelis Geppert, individually and as partners trading as Dean Studios, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Clark H. Geppert, Byron Geppert and Fidelis Geppert are individuals and partners trading as Dean Studios, with their principal office and place of business located at 211 West Seventh Street, in the city of Des Moines, State of Iowa.

Respondents have cooperated and acted together in the performance of the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the photographic business, including the developing of film and other services, such as the enlargement, tinting and framing of photographs. Sales are made to the public through respondents’ retail store in Des Moines, Iowa and by mail order.

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

PAR. 4. In the course and conduct of their mail order business, and for the purpose of inducing the sale of their photographic services and products, respondents have made certain statements in advertisements appearing in magazines and periodicals of national circulation, of which the following are typical:

WIN NEW LIVE MINIATURE

DOG *Join the fun. Everybody can win* This poor little dog is lonesome and wants to get a home . . . *Can you help show it the way?* Take a pencil and draw a line from the dog to the house . . . Then cut out the puzzle and send it to us with your name.

Picture of
dog in
coffee can

Puzzle

CAN YOU HELP THIS TINY DOG GET HOME? Just to get acquainted . . . I'll send you at *no cost* this real live miniature dog . . . Send in your entry today and simply hand out twenty get-acquainted coupons to friends or relations to help us get that many new customers . . . and I'll send you at *no cost* this wonderful Miniature Dog when the coupons are used as per our premium letter.

CAN YOU FIND 5 OBJECTS BEGINNING WITH THE LET- TER 'C'? Look at this Picture!

Join the fun. Try your skill—everybody can win! Think of having such a wonderful prize. Look at the picture carefully, write down 5 objects in the picture with names beginning with the letter 'C' (like 'cactus', etc.), then send us your list. Anyone can enter. *We're running this special test to get acquainted, and find a home for this real, live Miniature Monkey.*

Picture
puzzle

Picture of
monkey
in
cup

WIN REAL LIVE MINIATURE MONKEY

PAR. 5. Through the use of the aforesaid statements, respondents have represented, and now represent, that they are conducting a puzzle contest and that a pet dog or monkey or other merchandise will be furnished as prizes to persons who solve or correctly complete the puzzles published.

PAR. 6. Said statements and representations are false, misleading and deceptive. In truth and in fact, a miniature dog or monkey is not furnished as a prize to persons who solve or correctly complete the respective puzzles or contests. Such statements and representations of respondents are merely promotional schemes for the purpose of obtaining purchasers for respondents' services and prod-

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ucts. Persons responding to respondents' advertising are sent further advertising and explanatory material, together with twenty coupons. These coupons are to be distributed to twenty persons who must use them in purchasing at least three dollars worth of respondents' services and products. It is only when these coupons are thus distributed and used that the miniature dog or monkey will be delivered by respondents.

PAR. 7. Said promotional schemes in respondents' advertising are false, misleading and deceptive for the further reason that the purported puzzles and contests are not bona fide puzzles or contests. They are, instead, a deceptive form of "bait" or "decoy", attractive to the innocent, unwary and unsuspecting members of the purchasing public, and have been, and are, used as the initial steps in a system of effecting sales of respondents' photographic services and products. The purported puzzles and contests are, and have been, so simple of solution, or the winning thereof so easy, as to remove them from the categories of competition or skill, and are such that substantially everyone, if not all, may "qualify" and "win". Thus, these promotional schemes are not bona fide puzzle contests but are used to obtain the names of persons who are later encouraged by respondents to assist in the sale of their services and products.

PAR. 8. In the conduct of their business at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and other individuals likewise engaged in the sale of photographic products and services.

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true and directly aids and assists respondents in the sale of their services and products. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now 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.

Mr. John W. Brookfield, Jr., supporting the complaint.

Mr. Roy C. Frank, of Washington, D.C., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

The complaint in this proceeding alleges that the above-named respondents have violated the Federal Trade Commission Act by making false, misleading and deceptive statements and representations for the purpose of inducing the sale of their photographic services and products.

After issuance and service of the complaint, the above-named respondents, their attorney, and counsel supporting the complaint entered into an agreement for a consent order. The agreement has been approved by the Director, Associate Director and Assistant Director of the Bureau of Litigation. The agreement disposes of the matters complained about.

The pertinent provisions of said agreement are as follows: Respondents admit all jurisdictional facts; the complaint may be used in construing the terms of the order; the order shall have the same force and effect as if entered after a full hearing and the said agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission; the record herein shall consist solely of the complaint and the agreement; respondents waive the requirement that the decision must contain a statement of findings of fact and conclusions of law; respondents waive further procedural steps before the hearing examiner and the Commission, and the order may be altered, modified, or set aside in the manner provided by statute for other orders; respondents waive any right to challenge or contest the validity of the order entered in accordance with the agreement and the signing of said 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 undersigned hearing examiner having considered the agreement and proposed order hereby accepts such agreement, makes the following jurisdictional findings, and issues the following order:

JURISDICTIONAL FINDINGS

1. Respondents Clark H. Geppert, Byron Geppert and Fidelis Geppert are individuals and partners trading as Dean Studios, with their office and principal place of business located at 211 West Seventh Street, Des Moines, Iowa.

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

ORDER

It is ordered, That respondents Clark H. Geppert, Byron Geppert and Fidelis Geppert, individually and as partners trading as Dean Studios, or trading under any other name or names, and their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of photographic services, including the developing of film, and the sale of enlargements, frames for photographs, or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that respondents are conducting a puzzle contest in which prizes will be awarded for correctly solving the puzzle, unless such is the fact.
2. Failing to clearly and conspicuously disclose that participants in "puzzle contests" will not receive prizes until their efforts have resulted in the sale to others of respondents' products.
3. Misrepresenting in any manner, directly or by implication, the nature of any contest or the prizes which will be awarded in connection therewith.

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 29th day of September 1960, become the decision of the Commission; and, accordingly:

It is ordered, That the 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.