

individually and as officers 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
NATIONAL ALBUMS, INC., ET AL.

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

Docket 7860. Complaint, Apr. 8, 1960—Decision, May 16, 1961

Consent order requiring Los Angeles sellers of photograph albums together with certificates for photographs to be taken at independent affiliated studios, through salesmen who called upon mothers of newborn children particularly, to cease making such false representations as that persons solicited were specially selected, were to receive free a photograph album worth \$49.95 and up, and that the value of the album and photographs provided by the certificate was approximately \$165.85.

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 National Albums, Inc., a corporation, and Harry Fracter, Harry A. Goldman, Albert Parvin and Rudy Haber, individually and as officers 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, National Albums, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 8755 Colgate Avenue, Los Angeles, California.

Respondents Harry Fracter, Harry A. Goldman, Albert Parvin and Rudy Haber are officers of the corporate respondent. These individuals formulate, direct and control the policies, acts and practices of the corporate respondent and their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for more than one year 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. In the course and conduct of their business, respondents either have caused their photograph albums, when sold, and the aforesaid certificates, to be transported from their place of business in the State of California to purchasers thereof located in various other States of the United States, or have shipped said albums across state lines to their salesmen who deliver albums to the purchasers upon the execution of contracts of purchase. Respondents, subsequent to the purchase of albums, have engaged in an extensive course of commercial intercourse in commerce with the purchasers. They maintain, and at all times mentioned herein have maintained, a course of trade in said albums and certificates in commerce, as "commerce" is defined in the Federal Trade Commission Act. Their volume of trade in said commerce is and has been substantial. Respondents further engage 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.

PAR. 3. At all times mentioned herein, respondents have been, and are now, in direct and substantial competition with other corporations, firms and individuals engaged in the sale and distribu-

Complaint

58 F.T.C.

tion of photograph albums, together with certificates for photographs to be taken at independent studios.

PAR. 4. Respondents, in connection with and as a part of their business, have entered into agreements or understandings with a number of photographic studios located in the various States of the United States, whereby said studios have agreed to honor certificates for photographs delivered to the purchasers of respondents' albums. These certificates provide that the holders are entitled to receive fourteen 8 x 10 photographs of any member of the family at the rate of two a year at intervals of not less than ninety days. In the course and conduct of their business, salesmen employed by respondents call upon individuals, usually mothers of newborn children, in their homes, whose names are usually obtained from newspapers, hospitals, maternity lists, baby lists or by referrals, and solicit the sale of the aforesaid albums and certificates at a price of \$49.95.

PAR. 5. Respondents, in the course and conduct of their business, by means of oral statements made by their sales representatives, and by means of statements in the purchase contracts, have represented, directly or by implication:

1. That the persons solicited have been especially selected.
2. That the persons solicited were to receive a photograph album free.
3. That respondents' album was worth various amounts ranging from \$49.95 upwards.
4. That the value of the album and the photographs provided by the certificate was approximately \$165.85.

PAR. 6. The aforesaid representations were false, misleading and deceptive. In truth and in fact:

1. The persons solicited by respondents' salesmen are not especially selected.
2. The persons solicited do not receive an album free for the reason that they are required to pay \$49.95, which amount is a charge for the album.
3. Respondents' album is not worth or of a value of \$49.95; that is, its usual and customary selling price at retail is not \$49.95.
4. The value of the album and the photographs provided by the certificate is substantially less than \$165.85 in many areas where respondents have offered for sale and sold said combination.

PAR. 7. The use by respondents of the foregoing false, misleading and deceptive statements and representations has had and now has 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 were true and to induce the purchasing public to purchase substantial quantities of respondents' albums as a result of such erroneous and mistaken belief. As a result thereof, trade has been unfairly diverted to respondents from their competitors and injury has thereby been done to competition in commerce.

PAR. 8. 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 in commerce and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

Mr. John J. McNally and Mr. Edward F. Downs, for the Commission.

Mindlin and Levy, by *Mr. Victor L. Mindlin*, of Los Angeles, Calif., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission), on April 8, 1960, issued its complaint herein, charging the respondents National Albums, Inc., a corporation, and Harry Fracter, Harry A. Goldman, Albert Parvin and Rudy Haber, individually and as officers of said corporation, with having violated the provisions of the Federal Trade Commission Act, and respondents were duly served with process.

On March 21, 1961, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement Containing Consent Order To Cease And Desist", which had been entered into by and between respondents National Albums, Inc., Harry Fracter and Rudy Haber, their counsel and counsel supporting the complaint, under date of February 13, 1961, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

After due consideration, the hearing examiner finds that said agreement, both in form and in content, is in accord with §3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and that by said agreement the parties signatory thereto have specifically agreed to the following matters:

1. Respondent National Albums, Inc. is a corporation existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located

at 8755 Colgate Avenue, Los Angeles, California. Respondents Harry Fracter and Rudy Haber are officers of the corporate respondent. The said respondents formulate, direct and control the acts and practices of the corporate respondent and their address is the same as that of the corporate respondent.

2. The said 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.

3. This agreement disposes of all of this proceeding as to all parties and provides for dismissal of the charges of the complaint against respondents Harry A. Goldman and Albert Parvin, as individuals and as officers of respondent corporation, on the basis of matter set forth in affidavits of Harry Fracter, Harry A. Goldman and Albert Parvin which are incorporated into this agreement by reference.

4. Respondents National Albums, Inc., a corporation, and Harry Fracter and Rudy Haber, as individuals and as officers of said corporation, waive:

(a) Any further procedural steps before the hearing examiner and the Commission;

(b) The making of findings of fact or conclusions of law; and

(c) All of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

5. 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.

6. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

7. This agreement is for settlement purposes only and does not constitute an admission by the said respondents that they have violated the law as alleged in the complaint.

8. The following order to cease and desist may be entered in this proceeding by the Commission without further notice to the said respondents. When so entered it shall have the same force and effect as if entered after a full hearing. It may be altered, modified or set aside in the manner provided for other orders. The complaint may be used in construing the terms of the order.

Upon due consideration of said complaint and agreement, the hearing examiner approves and accepts the said "Agreement Containing Consent Order To Cease And Desist"; finds that the Commission has jurisdiction of the subject matter of this pro-

ceeding and of the respondents herein; that the complaint states a legal cause for complaint under the Federal Trade Commission Act against respondents National Albums, Inc., a corporation, and Harry Fracter and Rudy Haber, individually and as officers of said corporation, both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; and that the following order to cease and desist, as proposed in said agreement, is appropriate for the just disposition of all the issues in this proceeding as to the corporate respondent and individual respondents Harry Fracter and Rudy Haber, as is the dismissal of the complaint herein, as provided for in the agreement, with respect to respondents Harry A. Goldman and Albert Parvin. Therefore,

It is ordered, That respondents National Albums, Inc., a corporation, and its officers, and Harry Fracter and Rudy Haber, as individuals or as officers of said corporation, 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 representing, directly or by implication:

- (a) That persons solicited are individually selected, or that they sell only to selected persons;
- (b) That their album is given free or without cost;
- (c) That the value of the albums is any amount which is in excess of the price at which such albums are usually and customarily sold at retail;
- (d) That the value of the photographs is any amount which is in excess of the price at which such photographs are usually and customarily sold at retail;
- (e) That the value of the albums and the photographs, sold together, is any amount which is in excess of the price at which said albums and the photographs are usually and customarily sold, as separate items, at retail.

It is further ordered, That the complaint herein, insofar as it concerns respondents Harry A. Goldman and Albert Parvin, as individuals and as officers of respondent corporation, be, and the same hereby is, dismissed.

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 16th day of

Complaint

58 F.T.C.

May 1961, become the decision of the Commission; and, accordingly:

It is ordered, That respondents National Albums, Inc., a corporation, and Harry Fracter and Rudy Haber, individually and as officers 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.
