

ing examiner shall, on the 20th day of September 1961, 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.

IN THE MATTER OF

BILL JORDAN TRADING AS MODERN STUDIOS

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

Docket 8383. Complaint, May 4, 1961—Decision, Sept. 20, 1961

Consent order requiring an individual in Dallas, Tex., engaged in the sale of photographs, particularly to mothers of new babies, to cease failing to honor his so-called "free portrait gift" offer; delivering finished pictures which were inferior to samples displayed; failing to deliver additional pictures or making only partial delivery of orders paid for, and delaying deliveries unduly; and failing to re-photograph children whose parents were dissatisfied, or to refund money paid in advance, in accordance with offer.

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 Bill Jordan, an individual trading as Modern Studios, hereinafter referred to as respondent, has 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 Bill Jordan is an individual trading as Modern Studios, with his principal office and place of business located at 2209 Cedar Springs Road in the City of Dallas, State of Texas.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of photographs to the public. In the course and conduct of his business as aforesaid, respondent now causes, and for some time last past has caused, his said photographs, when sold, to be shipped from his place of business in the State of Texas to purchasers thereof located in various other states of the United States, and maintains, and at all times

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mentioned herein has maintained, a substantial course of trade in said photographs in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of his business, as aforesaid, respondent has been in substantial competition, in commerce, with corporations, firms and individuals in the sale of photographs of the same general kind and nature as those offered by the respondent.

PAR. 4. Respondent's method of interesting members of the public in the purchase of his photographs has been by having an agent deliver, to the mothers of recently born children, a certificate ostensibly entitling the parent to have photographs taken of her child and to receive a 4" x 6" picture of the child without any charge. The purpose in offering the gift is to create an opportunity for respondent's salesmen to sell a number of additional pictures to the parent, at a price. A typical certificate reads as follows:

THIS FREE PORTRAIT GIFT . . .
Cradle Car presents to you and your child one large
4 x 6 Photograph
as our gift to you on this memorable occasion.
Precious little ones deserve
Precious photographs. MODERN
STUDIOS, Masters of the Guild,
will capture forever your
baby at its loveliest in
a life-like portrait. Sittings
taken in the comfort of
your home, by appointment
only.

A PHOTOGRAPH TO BE TREASURED ALWAYS

NO COST OR
OBLIGATION

MODERN STUDIOS
NEW ORLEANS, LA.

ALLOW NO IMITATORS BE SURE IT'S M-O-D-E-R-N

In response to inquiries induced by such advertisements, respondent or his employees, agents or representatives call upon members of the public and prospective purchasers initiating such inquiries, display samples of attractively colored and finished pictures and make various oral representations concerning the quality of finished pictures that respondent will furnish for a price, the time in which finished pictures will be delivered and respondent's method of effecting purchasers' satisfaction if finished pictures of their children are unsatisfactory to purchasers.

PAR. 5. Through the use of the aforesaid advertisements, statements and representations set out and referred to in PARAGRAPH FOUR, above, respondent has represented and now represents, directly and by implication, to the purchasing public, that:

1. Respondent would give a free picture to the parent of a child who was photographed by respondent.

2. Pictures to be made of children photographed by respondent would be equal in appearance, quality and workmanship to samples displayed to parents.

3. If parents were dissatisfied with the appearance, quality or workmanship of delivered pictures of their children, respondent would take additional photographs and make additional pictures or refund advance payments made therefor.

4. Pictures of children photographed by respondent would be delivered soon after respondent had photographed a child, or by a certain time.

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

1. In many instances respondent has failed to give and deliver to parents free pictures of their children photographed as a result of parents' response to respondent's so-called "free portrait gift" offer.

2. Pictures made of children photographed by respondent were not equal in appearance, quality or workmanship to samples displayed to parents.

3. In many instances respondent has failed to deliver additional pictures of children which parents had ordered and paid or partially paid for, or has made only partial delivery of orders; and the time of delivery in many other instances has been several months later than the promised or implied time of delivery.

4. Respondent has failed to re-photograph children whose parents were dissatisfied with delivered pictures for which the parents had paid, or to refund monies paid by parents in advance for pictures which they found unsatisfactory when delivered and which parents thereafter notified respondent were not satisfactory.

PAR. 7. The use by respondent 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 into the purchase of substantial quantities of respondent's product by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondent from his competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 8. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and fair and deceptive acts and practices and unfair methods of competition of respondent's competitors and constituted, and now constitute, un-

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tion, in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

This matter having come on to be heard by the Commission upon a record consisting of the Commission's complaint charging the respondent named in the caption hereof with violation of the Federal Trade Commission Act and an agreement by and between respondent and counsel supporting the complaint, which agreement contains an order to cease and desist, an admission by the respondent of all the jurisdictional facts alleged in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that he has violated the law as alleged in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission having considered the agreement and order contained therein and being of the opinion that the agreement provides an adequate basis for appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings are made, and the following order is entered.

1. Respondent, Bill Jordan, is an individual trading as Modern Studios, with his principal office and place of business located at 3325 N. Fitzhugh, in the City of Dallas, State of Texas.

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

ORDER

It is ordered, That respondent Bill Jordan, an individual trading as Modern Studios, or under any other name, and respondent's representatives, agents or employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of photographs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist:

1. Representing, directly or indirectly, that respondent will give to the parent of a child, or to any other person solicited, a free picture of a child or other subject to be photographed by respondent, unless such picture is in fact delivered and furnished without charge.

2. Representing, directly or indirectly, that pictures to be delivered to parents or other persons solicited will be equal in appearance, quality or workmanship to samples displayed, unless the pictures delivered are in fact equal in appearance, quality or workmanship to such samples; or otherwise misrepresenting the appearance, quality or workmanship of photographs to be delivered.

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3. Utilizing any sales plan or method which involves the use or display of sample pictures of a kind or quality superior to those which the respondent actually delivers.

4. Representing, directly or indirectly, that in the event of customer dissatisfaction with delivered pictures respondent will make a refund, or that he will rephotograph a subject, unless, when notified of dissatisfaction, he makes such refund or takes additional photographs and delivers pictures satisfactory to the purchaser; or misrepresenting in any way the manner in which he will perform in the event of customer dissatisfaction with delivered pictures.

5. Failing to deliver or ship pictures to customers within the period or time specified by respondent to such customers, or misrepresenting in any manner the time within which merchandise will be delivered or shipped.

6. Failing to deliver any pictures for which delivery has been promised.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.
