

(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.

It is further ordered, That the motion of respondent Adams Dairy, Inc., to dismiss the complaint against it be, and it hereby is, granted, and the complaint be, and it hereby is, dismissed.

Commissioner MacIntyre not participating.

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 C-747. Complaint, May 26, 1964—Decision, May 26, 1964

Consent order requiring Des Moines, Iowa, retailers of cameras, photograph developing, etc., to cease representing falsely, in magazine advertising, that they were offering transistor radios or other gifts to persons handing out 20 "get acquainted coupons" to friends, when the purported "gifts" were delivered only after the 20 coupons distributed were used by recipients in the purchase of respondents' services and products; and that they would sell a snapshot enlargement in a "Movietone" frame for 49¢, when the enlargement offer was a deceptive method of inducing persons to send in their hair and eye color and thus enable respondents to include an unordered color photograph with the enlargement and charge \$3.37 for the combination.

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 copartners trading as Dean Studios, hereinafter referred to as respondents, have

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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 copartners trading as Dean Studios, with their principal office and place of business located at 913 Walnut 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 sale and distribution of cameras, photographic supplies and accessories, photograph developing, enlarging and tinting, camera repairing and other products and services at retail to the purchasing public.

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 the District of Columbia, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in their said products, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business as aforesaid and for the purpose of inducing the sale of their photographic services and products, respondents have made certain statements and representations in advertisements appearing in magazines and periodicals of national circulation.

Typical and illustrative of said statements and representations, but not all inclusive thereof, are the following:

New General Electric

PORTABLE RADIO

at

NO COST

Picture

of

Radio

To get acquainted, I'll send you this precision made 7 transistor "gem of the vest pocket" portable radio. This powerful G.E. Miniature Portable comes in handsome reusable jewelry box, complete with carry case, earphone and battery. Simply hand out or mail only twenty get acquainted coupons FREE to friends or relatives and help us get that many new customers as per our premium letter. * * * Please send me your favorite snapshot, photo or Kodak picture when writing for your G.E. radio. We will make you a beautiful 5 x 7 inch enlargement in a "Movietone" frame and you can tell friends about our hand colored enlargements when handing out the coupons. Send today and pay postman only forty-nine cents and a few cents for our C.O.D. service plus postage on arrival. Your original returned. Also include the color of hair and eyes with each picture so

I can give you our bargain offer on a second enlargement hand colored in oils for greater beauty, sparkle and life. Limit of 2 to any one person. Send today for your 20 FREE coupons to hand out and please enclose your name, address and favorite snapshot. Our supply of G.E. radios is limited * * *.

Offers on similar terms and conditions are made for miniature dogs, Polaroid cameras, and Bulova radios.

PAR. 5. Through the use of the aforesaid statements and others similar thereto, but not included herein, respondents represented, directly or by implication:

1. That they were making a bona fide offer of a transistor radio, a gift of a miniature dog, a Polaroid camera, a Bulova radio, or other articles of merchandise, for the sole consideration of handing out or mailing twenty coupons.

2. That they were making a bona fide offer to sell a 5 x 7 inch enlargement of a snapshot in a "Movietone" frame for only 49¢ and a few cents for c.o.d. service plus postage, and that to those purchasers of said snapshot enlargements who sent in the color of their hair and eyes, respondents would submit an offer setting forth the price, terms, and conditions for the purchase of a color photograph.

PAR. 6. In truth and in fact:

1. Said offers are not bona fide offers of gifts for the sole consideration of handing out or mailing twenty coupons, but are made for the purpose of obtaining purchasers for respondents' services and products. Persons responding to respondents' advertising are sent further advertising and explanatory material, together with twenty coupons. These coupons must be distributed to twenty persons who must use them in purchasing respondents' services and products. It is only when these coupons are thus distributed and used by the recipients that the transistor radio, Polaroid camera, Bulova radio, or other articles of merchandise are delivered by respondents.

2. The offer of an enlargement of a 5 x 7 inch snapshot in a "Movietone" frame for only forty-nine cents and a few cents for c.o.d. mail service plus postage is not a genuine and bona fide offer, but said offer is a deceptive method of inducing innocent, unwary and unsuspecting members of the purchasing public to send along with their order for said 5 x 7 inch enlargement information relating to the color of their hair and eyes, which enables the respondents to forward an unordered color photograph along with said 5 x 7 inch enlargement and to charge purchasers thereof a total price of \$3.37 c.o.d. for said combination 5 x 7 inch enlargement and unordered color photograph, rather than the 49¢ anticipated by the purchaser.

Respondents further have thereby resorted to and engaged in the deceptive and misleading practice of shipping additional merchandise to individuals by c.o.d. mail without having received an order therefor.

Therefore, the advertisements and representations referred to in Paragraphs Four and Five were and are exaggerated, false, misleading and deceptive.

PAR. 7. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of photographic equipment and services of the same general kind and nature as that sold by respondents.

PAR. 8. 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 into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 9. 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 methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondents, Clark H. Geppert, Byron Geppert, and Fidelis Geppert are individuals and copartners trading as Dean Studios, with

their principal office and place of business located at 913 Walnut Street, in the city of Des Moines, State of Iowa.

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 respondents Clark H. Geppert, Byron Geppert, and Fidelis Geppert, individually and as copartners, 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 cameras, photographic supplies and accessories, photograph developing, enlarging and tinting, camera repairing, or other products or services 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 Transistor Radios, Miniature Dogs, Polaroid Cameras, Bulova Radios or any other articles of merchandise are given at no cost or at nominal cost in return for handing out or mailing 20 or any other small number of coupons or the performance of any other act or service, without clearly and conspicuously revealing in immediate connection therewith all of the obligations, duties and requirements necessary to the receipt and retention of said articles of merchandise;

2. Using in any manner, a sales plan, scheme or device wherein false, misleading or deceptive statements or representations are made in order to obtain leads or prospects for the sale of merchandise or services;

3. Representing, directly or indirectly, that any products or services are offered for sale when such offer is not a bona fide offer to sell said products or services, as is and as represented and for the price and on the terms and conditions stated.

4. Shipping or sending any unordered or unauthorized merchandise by c.o.d. mail or attempting in any manner to collect for any unordered or unauthorized merchandise or to secure or require the return thereof.

It is further 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 this order.

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IN THE MATTER OF

R. H. MACY & CO., INC.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION ACT*Docket 7869. Complaint, Apr. 19, 1960—Decision, May 27, 1964*

Modified order—following the Second Circuit's decree, 326 F. 2d 445—modifying and enforcing the Commission's desist order of May 15, 1962, 60 F.T.C. 1249, requiring a large New York City department store to cease soliciting and receiving payment from any supplier for institutional advertising when it knew, or should have known, that proportionally equal payments were not made available to other customers competing with the respondent.

MODIFIED ORDER TO CEASE AND DESIST

Respondent having filed in the United States Court of Appeals for the Second Circuit a petition to review and set aside the order to cease and desist issued herein on May 15, 1962; and the court on January 16, 1964, having filed its opinion and entered judgment and on February 14, 1964, having entered its final decree modifying and, as modified, affirming and enforcing said order to cease and desist; and the time allowed for filing a petition for certiorari having expired and no such petition having been filed;

Now, therefore, it is hereby ordered, That the aforesaid order to cease and desist be, and it hereby is, modified, in accordance with the said final decree of the court of appeals, to read as follows:

It is ordered, That respondent, R. H. Macy & Co., Inc., a corporation, its officers, employees, agents and representatives, directly or through any corporate or other device, in or in connection with the purchase of department store products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Receiving, or soliciting and receiving, payment from any vendor for institutional advertising when respondent knows, or should know, that such payment is not affirmatively offered or otherwise made available by such vendor on proportionally equal terms to all of its other customers competing with respondent in the sale and distribution of the vendor's products.

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IN THE MATTER OF

FINGERHUT MANUFACTURING COMPANY ET AL.

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

Docket 8565. Complaint, Apr. 17, 1963—Decision, May 27, 1964

Order requiring Minneapolis mail order sellers of automobile seat covers to cease representing falsely, in form letters, brochures and circulars mailed to prospects, that there was no extra charge when their seat covers were purchased on the installment plan and that their products carried a "written lifetime guarantee" when the guarantee had undisclosed limitations.

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 Fingerhut Manufacturing Company, a corporation, and Manny Fingerhut, Herman Schwartz, Stanley H. Nemer, and William Fingerhut, 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 thereto would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Fingerhut Manufacturing Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its principal office and place of business located at 3104 West Lake Street in the city of Minneapolis, State of Minnesota.

Respondents Manny Fingerhut, Herman Schwartz, Stanley H. Nemer, and William Fingerhut are officers of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the offering for sale and sale of automobile seat covers to the public by mail order.

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