

preceding paragraphs of this order.
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.

IN THE MATTER OF
FAMILY RECORD PLAN, INCORPORATED, ET AL.

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

Docket C-819. Complaint, Aug. 27, 1964—Decision, Aug. 27, 1964

Consent order requiring a Los Angeles, Calif., seller of pictures through a "photograph album plan" to cease misrepresenting that prospective purchasers are specially selected, that the album is a free gift, that its prices involve savings, and using deceptive letterheads to collect delinquent accounts.

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 Family Record Plan, Incorporated, a corporation, and Irwin E. Kane and Henry G. Isherwood, 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 as follows:

PARAGRAPH. 1. Respondent Family Record Plan, Incorporated, 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 2015 West Olympic Boulevard, Los Angeles 6, California.

Respondents Irwin E. Kane and Henry G. Isherwood, are officers of the aforesaid corporate respondent. They formulate, direct and control the policies, acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their addresses are the same as that of corporate respondent.

PAR. 2. Respondents are now, and for more than two years last past have been, engaged in the offering for sale, sale and distribution

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of a "photograph album plan." Respondents' album plan consists of a photograph album and a certificate entitling the purchaser to have a specified number of photographs taken at designated photographic studios. In the course and conduct of their business, respondents cause, and have caused, the aforesaid photograph albums and certificates, when sold, to be transported from their place of business in the State of California to purchasers of respondents' album plan located in various other States of the United States. In some instances, respondents cause, and have caused, said photograph albums to be shipped from the supplier or manufacturer thereof to purchasers of respondents' album plan located in various States of the United States. In those instances, respondents cause, and have caused, said certificates to be transported from their place of business in the State of California to purchasers of their album plan located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said photograph albums and certificates in commerce as "commerce" is defined in the Federal Trade Commission Act. Their volume of trade in said commerce has been and is 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. In connection with, and as a part of, their business, respondents have entered into agreements or understanding with a large number of independent photographic studios located in most of the States of the United States whereby said studios have agreed to honor certificates for photographs issued to purchasers of respondents' photograph album plan. These certificates provide that the holders thereof are entitled to receive sixteen 8" x 10" photographs of any member of the family at the rate of two a year at intervals of not less than 90 days.

PAR. 4. In the course and conduct of their business as aforesaid, respondents employ sales agents or representatives who call upon prospective purchasers and solicit their purchase of respondents' album plan. Purchasers of respondents' album plan are frequently young parents with one or more children.

In the course of such solicitation and for the purpose of inducing, and which have induced, the purchase of respondents' photograph album plan, said sales agents or representatives have made many statements and representations, directly and by implication, to prospective purchasers of respondents' photograph album plan. Some of these statements and representations are made orally by the aforesaid sales

agents or representatives to prospective purchasers. Some of the said statements and representations are contained in advertising and promotional literature displayed and distributed to prospective purchasers by said sales agents or representatives. The aforesaid advertising and promotional literature is furnished to said sales agents or representatives by the respondents.

Among and typical of the aforesaid statements and representations, and others of similar import and meaning but not specifically set forth herein, are the following:

1. That the photograph album included in respondents' plan is free or a free gift;
2. That the person solicited has been especially selected;
3. That sample photographs shown to the prospective purchaser were taken by the local affiliated independent studio where the purchaser is to have the photographs taken pursuant to respondents' plan;
4. That the photograph album included in respondents' plan was a \$50.00 retail value in the trade area or areas where the representation was made. Respondents' sales agents or representatives further represent that, by purchasing respondents' plan for \$59.95, the purchaser will secure said album and the photographs specified in respondents' plan for \$59.95 and will realize a saving in the amount of the difference between \$59.95 and the total of the prevailing retail selling prices of said album and the photographs to which the purchaser will be entitled in the trade area or areas where the representation was made.

PAR. 5. In truth and in fact:

1. Respondents' album is not free or a free gift. The amount which the purchaser pays is for the album plus certain postage and handling charges;
2. Persons solicited by respondents' sales agents or representatives are not especially selected. The only selection process engaged in by respondents is an effort to confine their solicitation to persons likely to purchase respondents' photograph album plan;
3. Sample photographs shown to prospective purchasers of respondents' plan are not, in every instance, taken by the local affiliated independent studio where the purchaser is to have the photographs taken pursuant to respondents' plan;
4. The amount represented to be the prevailing retail selling price of the photograph album included in respondents' plan appreciably exceeds the price or prices at which substantial sales of such an album were made at retail in the recent, regular course of business in the trade area or areas where the representation was made. Therefore, purchas-

ers of respondents' plan did not realize a saving in the amount of the difference between \$59.95 and the price or prices at which substantial sales of such an album and photographs to which the purchaser will be entitled were being made in the trade area or areas where the representation was made.

Therefore, the statements and representations as set forth in Paragraph Four hereof are false, misleading and deceptive.

PAR. 6. In the course and conduct of their business, respondents send through the mails letters, forms and other printed matter from their place of business in the State of California to purchasers of respondents' album plan located in various other States of the United States whose accounts have become delinquent. Said letters, forms and other printed matter indicate that they originate from the "Coast to Coast Collection Service, P.O. Box 54039, Terminal Annex, Los Angeles 54, California." Respondents thereby represent that such delinquent accounts have been referred to an independent organization engaged in the business of collecting delinquent accounts.

In truth and in fact, "Coast to Coast Collection Service" is a fictitious name used by respondents in collecting delinquent accounts and the accounts in question have not been referred to an independent organization engaged in the business of collecting delinquent accounts. Therefore, the aforesaid representations are false, misleading and deceptive.

PAR. 7. In the course and conduct of their business, respondents frequently desire to ascertain the current address of purchasers of respondents' album plan whose accounts have become delinquent. For this purpose, respondents send through the mails from their place of business in the State of California into and through various other States of the United States printed forms seeking information from persons listed by the purchaser in question as personal references. Typical, but not all inclusive, of such forms is the following:

IMPORTANT REQUEST

Date _____
Regarding _____ # _____

[]

THIS INFORMATION IS URGENTLY NEEDED, SEE BELOW. We are vitally interested in reaching the above named customers to finish providing our service. We have been compensated for this service and wish to be sure that these clients receive what they have paid for, especially if they have moved to another district. Inasmuch as there is a definite time limit under which the services must be furnished, a prompt reply will be appreciated by us as well as by your friend who listed you for this purpose.

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Their new address is -----

I do not know, suggest you try in care of -----

Through the use of such forms, respondents represent, directly or by implication, that the information is desired for the purpose of furnishing services to the person in question and that furnishing the information will therefore be to the advantage of the person whose current address is desired.

In truth and in fact, the purpose for which such information is sought is solely for respondents' use in connection with the collection of delinquent accounts. Therefore, said statements and representations are false, misleading and deceptive.

PAR. 8. At all times mentioned herein, respondents have been, and are now, in substantial competition with corporations, firms and individuals engaged in the sale and distribution of photograph album plans consisting of photograph albums together with certificates for photographs to be taken at independent photographic studios.

PAR. 9. The use by respondents of the foregoing false and misleading statements, representations and practices, as set forth in Paragraphs Four and Five hereof, has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that such statements and representations were, and are, true and to induce a substantial number thereof to purchase respondents' photograph album plan by reason of said erroneous and mistaken belief.

By and through the acts and practices as set forth in Paragraph Six hereof, respondents coerce and intimidate purchasers of respondents' photograph album plan whose accounts respondents claim to be delinquent and mislead such persons into believing that their accounts have been turned over to an independent organization engaged in collecting delinquent accounts. Respondents' acts and practices constitute a scheme or device to induce subscribers to pay such accounts through deception and misrepresentation.

The use by respondents of the printed forms as set forth in Paragraph Seven hereof has the tendency and capacity to mislead and deceive many persons to whom such forms are sent into the erroneous and mistaken belief that the statements and representations appearing on such forms are true and to induce such persons to give information which they would not otherwise supply.

PAR. 10. The aforesaid acts and practices of respondents as alleged in Paragraphs Four and Five hereof, 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.

The aforesaid acts and practices of respondents as alleged in Paragraphs Six and Seven hereof, were, and are, all to the prejudice and injury of the public and constituted, and now constitute, 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. Respondent Family Record Plan, Incorporated, 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 2015 West Olympic Boulevard in the city of Los Angeles, State of California.

Respondents Irwin E. Kane and Henry G. Isherwood are officers of said corporation, and their address is the same as that of said corporation.

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 Family Record Plan, Incorporated, a corporation, and its officers, and Irwin E. Kane and Henry G. Isher-

wood, individually and 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 album plans, photograph albums or certificates for photographs, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, that:

- (1) Respondents' photograph album is free or a free gift;
- (2) Persons solicited have been especially selected;
- (3) Sample photographs shown to prospective purchasers were taken by the local affiliated independent studio where the purchaser is to have the photographs taken pursuant to respondents' plan unless such photographs were taken as represented;
- (4) Any amount is the price at which the photograph album included in respondents' plan has been or is being sold in the local trade area or areas where the representation is being made unless substantial sales of the photograph album have been made at such price in the recent, regular course of business in such trade area or areas;
- (5) The album included in respondents' plan has a value of or is worth any amount when such amount appreciably exceeds the price or prices at which substantial sales of the album or an album of at least like grade and quality have been made in the recent, regular course of business in respondents' trade area; or otherwise misrepresenting in any manner the retail value of respondents' merchandise; provided, however, that nothing contained hereinabove shall prohibit respondents from representing that the photograph album included in respondents' plan is being offered for sale at retail at a designated price in respondents' trade area if respondents establish that such album has been and is being offered openly and actively in good faith at such price by a substantial number of representative retail outlets.

B. Misrepresenting by means of comparative prices or in any other manner the savings afforded to purchasers of respondents' plan.

C.

- (1) Using the name "Coast to Coast Collection Service" or any other name or names of similar import or meaning to describe, designate or refer to respondents' business or otherwise representing in any manner, directly or by implication,

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that respondents' business is that of an independent organization engaged in the business of collecting delinquent accounts;

(2) Representing, directly or by implication, that accounts not referred to an independent organization engaged in collecting delinquent accounts have been so referred, or otherwise representing, directly or by implication, that any action not taken to effect the collection of delinquent accounts has been taken;

(3) Using letters, forms, questionnaires or other items of printed or written matter in connection with obtaining information concerning delinquent debtors which do not clearly reveal that the purpose for which the information is sought is that of obtaining information concerning delinquent debtors.

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.

IN THE MATTER OF

CHINCHILLA RANCHERS, INC., ET AL.