

Complaint

66 F.T.C.

IN THE MATTER OF
RAINBOW-UNITED PHOTOGRAPHIC STUDIOS OF
AMERICA, INC., ET AL.

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

Docket C-847. Complaint, Oct. 8, 1964—Decision Oct. 8, 1964

Consent order requiring Chicago, Ill., sellers of color photographs through door-to-door solicitation to cease misrepresenting the nature of their business, the quality of their pictures, and the promptness of delivery.

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 Rainbow-United Photographic Studios of America, Inc., a corporation, and Bernard Baskin and George Whitehouse, 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 Rainbow-United Photographic Studios of America, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 2414 West Lawrence Avenue, in the city of Chicago, State of Illinois.

Respondents Bernard Baskin and George Whitehouse are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the offering for sale, sale and distribution of color photographs to the general public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of Illinois 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 said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the

purpose of inducing the purchase of their color photographs, the respondents and their agents engage in the acts and practices hereinafter set forth.

Most of the respondents' sales of color photographs are effected by means of door-to-door solicitation. For this purpose, they employ three types of agents, namely, coupon salesmen, photographers, and proof passers. Prospective purchasers are first contacted by a coupon salesman who exhibits to the prospect sample photographs and a coupon or certificate which read in part as follows:

UNITED PHOTOGRAPHIC STUDIOS OF AMERICA, INC. FILM PROCESSED IN HOLLYWOOD and NEW YORK UNITED'S Professional Photographers have taken over ONE MILLION PHOTOGRAPHS	
<i>Taken in Your Home . . .</i> A new sensational photograph, a new process and completely new idea in color film and color printing. If you had color photography before, you will find this the first great step in the color portrait field. Only one certificate per residence will be honored. Our Professional Photographers Use a High Speed Strobe-Lite NO HEAT—NO GLARE Variety of color proofs to be shown in your home. FAMILY GROUPS OUR SPECIALTY NO PASTELS THE NATION'S LARGEST COLOR PHOTOGRAPHY STUDIO YOU ARE UNDER NO OBLIGATION FOR ADDITIONAL PORTRAITS \$3.00 Cameraman Service Charge This cameraman's service charge entitles bearer to receive One 8 x 10 Multi-Color Portrait of One Person. An extra film charge of \$1.00 will be made for groups. This coupon good only on date shown. No refunds.	No. 42951 LICENSED Some of our Associated Studios in the Chicago Area : American Convention Photographers National Office : UNITED PHOTOGRAPHIC STUDIOS OF AMERICA, Inc. 2414 W. LAWRENCE AVE. CHICAGO 25, ILLINOIS PHONE Longbeach 1-0366 MEMBER CREDITORS' RATING BUREAU For Credit Protection since 1915, covering all of United States and Canada—a national organization
----- Day	----- Approx. Time
----- Date	----- Representative
United Photographic Studios of America, Inc. will not be bound by any representation or agreement, either verbal or in writing, except as contained and printed in this Certificate.	
This Agent is an Independent Contractor	AMOUNT PAID \$ ----
Mailing and handling charge— 50 cents additional.	PAY PHOTOGRAPHER BAL. \$ ----

If the coupon salesman succeeds in selling the prospect a coupon he generally collects the \$3.00 cameraman service charge, or a somewhat larger or lesser amount. Thereafter, the customer is contacted by a photographer who takes a number of different poses of the subject or subjects to be photographed. After the exposed film has been developed into proof slides, the latter are turned over to a proof passer who exhibits them to the customer for selection. At this time, the proof passer attempts to, and often does induce the customer to place an order for additional portraits.

PAR. 5. By and through the use of the aforesaid printed coupon or certificate and by and through oral statements made by their agents, respondents have represented, directly or by implication:

1. That the process they employed was new, and constituted a completely new idea in color film and color printing.
2. That the respondents' method constituted the first great step in the color portrait field.
3. By and through the use of the phrase "Professional Photographers" that those employed by respondents to take pictures used techniques employed by highly trained and skilled photographers.
4. That a variety of color proofs would be shown in the purchaser's home.
5. That the respondents' operate the largest color photography studio in the nation.
6. That their photographs are natural color portraits.
7. That their finished photographs will be equal in appearance, quality and workmanship to sample photographs and proof slides exhibited to purchasers and prospective purchasers.
8. That photographs ordered by customers will be delivered within a reasonable period of time.

PAR. 6. In truth and in fact:

1. The process and method employed by respondents was not new, but used principles and materials which had been readily available generally to purchasers of such materials.
2. Respondents' method was not the first great step in the color portrait field.
3. Those employed by respondents to take pictures did not use techniques employed by highly trained and skilled photographers, and therefore, respondents did not employ "Professional Photographers".
4. No color proofs were shown to purchasers or prospective purchasers, but color slides were shown to them.
5. Respondents have not operated, and do not now operate, the largest color photography studio in the nation.

6. The photographs offered for sale and sold by respondents are not natural color portraits. Although the photographs are colored in that they are not the conventional black and white type, they do not portray the true color of the eyes and complexion of the person or persons photographed.

7. The photographs offered for sale and sold by respondents are inferior to those which purchasers and prospective purchasers are led to believe they will receive as a result of viewing the sample photographs and proof slides exhibited by agents of respondents. In all instances the finished prints are far less brilliant and colorful than the samples and slides viewed by purchasers, and in many instances, there is a loss of proper focusing, or a distortion of features or colors, or both.

8. In many instances respondents do not deliver their products to purchasers within a reasonable period of time. In some instances, purchasers are forced to wait many weeks for delivery of photographs which have been fully or partially paid for.

Therefore the statements and representations as set forth in Paragraphs Four and Five hereof were and are 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 color photographs and portraits of the same general kind and nature as those 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 the 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. Respondent, Rainbow-United Photographic Studios of America, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 2414 West Lawrence Avenue, in the city of Chicago, State of Illinois.

Respondents Bernard Baskin and George Whitehouse 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 Rainbow-United Photographic Studios of America, Inc., a corporation, and its officers, and Bernard Baskin and George Whitehouse, individually and as officers of said corporation, and respondents' agents, representatives and 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 from representing, directly or by implication:

1. That the process employed by respondents is new, or is a new idea in color film or color printing.
2. That the respondents' method constitutes the first great step in the color portrait field.
3. That the respondents employ "Professional Photographers"; or otherwise representing that those persons employed by re-

spondents to take pictures use techniques employed by highly trained and skilled photographers: *Provided, however*, That it shall be a defense in any proceeding instituted for enforcement of this provision for respondents to establish that such persons do use said techniques when taking pictures for the purchasers and prospective purchasers of the pictures.

4. That color proofs other than color slide proofs will be shown or displayed to the purchaser.

5. That respondents operate the largest color studio in the nation or otherwise misrepresenting the size of respondents' business.

6. That respondents' photographs are natural color portraits or photographs.

7. That respondents' finished portraits or photographs will be equal in quality and workmanship to sample photographs and proof slides which have been exhibited to purchasers and prospective purchasers: *Provided, however*, That it shall be a defense in any proceeding instituted for enforcement of this provision for respondents to establish that the photographs furnished by them to purchasers are in every instance equal in quality and workmanship to sample photographs and proof slides exhibited to such purchasers and prospective purchasers.

8. That photographs ordered by customers will be delivered within a certain period of time or upon a particular date unless said photographs are delivered within such time or upon such date; or misrepresenting in any manner, directly or by implication, the period of time within which respondents' merchandise will be delivered.

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

BUTTERFIELD GOLF COMPANY, INC., ET AL.

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

Docket C-848. Complaint, Oct. 9, 1964—Decision, Oct. 9, 1964.

Consent order requiring a concern in Lisle, Ill., engaged in repainting and labeling used golf balls, and in the purchase of golf balls recovered or re-