

Complaint

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

IN THE MATTER OF

FILM CORPORATION OF AMERICA, ET AL.

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

Docket C-2119. Complaint, Dec. 17, 1971—Decision, Dec. 17, 1971

Consent order requiring a Pennsylvania mail order photofinishing firm to cease distributing "free" color film, coupled with a photofinishing offer, to the public through misrepresentations.

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 Film Corporation of America, and Ames Advertising Agency, Inc., corporations, 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. Film Corporation of America is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its executive offices located at The Benjamin Fox Pavilion, Foxcroft Square, in Jenkintown, Commonwealth of Pennsylvania. Respondent corporation also maintains processing and warehouse facilities in the city of Philadelphia, said addresses being S.W. Corner 20th and Allegheny Avenue, 4901 Stenton Avenue, and the Philadelphia Industrial Park. Film Corporation of America has used and continues to use the following trade names: National Brand Film, Famous Brand Film, Famous Brand, Famous-Brand 36 Pictures Photo Labs, Triple-Print Processing Laboratories, Famous Brand Triple-Print Laboratories, Photomation Film Labs, and Triple-Print Laboratories.

Ames Advertising Agency, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its principal office and place of business

located at The Benjamin Fox Pavilion, Foxcroft Square, in Jenkintown, Commonwealth of Pennsylvania. Ames Advertising Agency, Inc., is a wholly-owned subsidiary of Film Corporation of America.

The respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondent Film Corporation of America is now, and for some time last past has been, engaged in the advertising, offering for sale, sale, distribution and mail order photofinishing, *i.e.*, the developing, printing and processing of color negatives and black and white photographic film sold for amateur use. Respondent's film, which is predominantly of foreign manufacture, is now, and for some time last past has been, advertised, offered for sale, sold and distributed under the trade name "Famous Brand."

Respondent Ames Advertising Agency, Inc., is now, and for some time last past has been, an advertising agency of Film Corporation of America, and now prepares, designs and places, and for some time last past has prepared, designed and placed, respondent Film Corporation of America's newspaper and magazine advertisements and related direct mail promotional literature and mailers, including but not limited to the advertising referred to herein, to promote the sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of color film and the solicitation of mail order photofinishing business.

PAR. 3. In the course and conduct of its business as aforesaid, respondent Film Corporation of America now causes, and for some time last past has caused, its color negative photographic film, coupled with a film processing offer, when distributed, to be mailed from its place of business in the Commonwealth of Pennsylvania to prospective purchasers located in the various States of the United States and in the District of Columbia, and maintains and at all times mentioned herein has maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business and for the purpose of distributing a cartridge or roll of film and inducing the mail order finishing of aforesaid photographic film, the respondents have made, and are now making, numerous statements and representations in advertisements inserted in newspapers and magazines disseminated through the mails and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, coupon solicitation requests for film attached to general merchandise, direct mail and in-store solicitation of literature and promotional material.

Typical and illustrative of the foregoing, but not all-inclusive thereof, are the following:

Absolutely FREE sample roll of color film—Nothing To Buy No Obligation.
A Startling Introductory Offer.

Now You Can Deal Direct With America's Largest, Independent Processing Company Employing Over 1000 Technicians.

For Fast 24-48 Hour Service Mail To P.O. Box Nearest Your Home.

GUARANTEE If you are not 100% satisfied with your finished pictures your money will be promptly refunded.

Famous Brand Film.

CAUTION—This Film Can Only Be Processed On Our Special Equipment For Special Film & Process Combination.

Exclusive Triple Print Process

Be a hero * * * Introduce them to exclusive Triple-Print! It's a tremendous new patented Color Film and Processing breakthrough.

Kodak Equipment Used Exclusively.

12 Portrait Size Photos Bonus 1.

Bonus 2—Free 24 Extra Prints—24 additional wallet size prints * * * at no extra cost to you (2 duplicates of each printable negative on a 12 exposure roll).

New Roll of Color Film—Bonus 3—No Charge.

Never Buy Film Again!

27 Locations from Coast-to-Coast.

Remember! We Refund You To The Penny For All Unprintable Negatives Or If You Send Us Too Much Money.

No Middle Man Mark-up and our exclusive Triple Print Process gives you \$7.53 in FREE bonus extras everytime we develop your film.

Famous Brand.

Mail this valuable coupon to get FREE Color film for your Kodak or other camera.

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning not expressly set out herein, respondents have represented, and are now representing, directly and by implication that:

1. There are no gimmicks involved, no strings are attached, and no obligations of any kind are incurred as a result of consumer participation in the FREE color film offer.

2. The FREE sample roll of color film is an introductory offer.

3. Respondent Film Corporation of America is America's largest independent film processing company, employing over 1,000 "technicians."

4. Mail order customers receive fast 24-48 hour service on all of their film processing.

5. Respondent Film Corporation of America guarantees that mail order customers who are not 100 percent satisfied with the finished pictures will have their money promptly refunded.

6. The FREE sample roll of film and processing combination is special and a result of a tremendous new patented color film and processing breakthrough, and that this film can only be processed on respondent Film Corporation of America's special equipment for exclusive triple-print process.

7. Kodak equipment is used exclusively in respondent Film Corporation of America's film processing operation.

8. Mail order customers receive as a bonus 12 portrait size photos and 24 additional wallet size prints * * * at no extra cost.

9. Mail order customers receive as a bonus a new roll of color film; and will never have to buy film again.

10. Respondent Film Corporation of America has 27 film processing locations from coast-to-coast.

11. The respondent, Film Corporation of America, refunds in cash for all unprintable negatives or if the consumer sends too much money.

12. The triple-print process gives the mail order customer \$7.53 in FREE bonus extras every time respondent Film Corporation of America develops the customer's film.

13. The recipient of respondent Film Corporation of America's FREE color film will receive either a nationally well-known brand of color film or color film manufactured by a company which is well known to the American public. The use of the term "Kodak" and the color composition used in respondents' advertising and packaging (Kodak yellow and black), further tends to infer that popular American-made color film is being offered.

PAR. 6. In truth and in fact:

1. There are gimmicks involved, strings attached and participating consumers incur a definite obligation if the film is to be used. Until recently, recipients of the Famous Brand foreign film had no option except to return the exposed color film to respondent Film Corporation of America for processing. Although some major photofinishers are now undertaking the processing of Famous Brand foreign film, a substantial number of photofinishers located throughout the United States continue to refuse to process Famous Brand foreign film due to the technical problems involved in processing foreign film. Respondents failed to disclose these facts in connection with their offer.

2. The offer of a FREE sample roll of color film is not introductory. Respondent Film Corporation of America has, for a reasonably substantial period of time, in the regular course of its business made such offers on a continuing basis.

3. Respondent Film Corporation of America is not America's largest independent film processing company, nor does it employ 1,000 "technicians."

4. Mail order customers do not receive fast 24-48 hour service on all of their film processing. Depending upon the customer's location, the total time involved in returning finished prints usually runs from three to six days following receipt by respondent Film Corporation of America.

5. Mail order customers who are not completely satisfied with respondent Film Corporation of America's service will not have their money promptly refunded unless and until the customer returns the pictures, new roll of film, credit coupons, and specifically requests a cash refund. Guarantee refunds are usually given in credits rather than cash. These conditions are not revealed in the guarantee statement.

6. The FREE color film is not special, nor a tremendous new patented color film breakthrough. The film can be developed and printed on regular photofinishing equipment; the patented process involved herein has nothing to do with the development of the film but pertains to the manner in which the negative is printed to produce the triple print. The triple print is not exclusive; other photofinishers now offer triple print processing.

7. Kodak equipment is not used exclusively in respondent Film Corporation of America's film finishing operations.

8. Mail order customers do not receive as a bonus 12 portrait size photos and 24 additional wallet size prints * * * at no extra cost. The 12 prints are 4" x 4" and are not portrait size prints; the additional 24 prints are 2" x 2" and are not wallet size prints. The three prints involved herein are made simultaneously and the triple print processing fee charged by respondent Film Corporation of America covers the cost for said operation.

9. Mail order customers do not receive as a bonus a new roll of color film; the processing fee charges include the cost of the replacement roll of film.

10. Respondent Film Corporation of America does not have 27 film processing locations from coast-to-coast. The mailing material used by the respondent contains a list of post office boxes maintained by the respondent in 27 cities throughout the country. Consumers are directed to mail the exposed film to the post office box nearest their homes. The contents of each post office box are collected daily by an independent agent and sent by air freight to the company's central processing facility in Philadelphia.

11. The respondent Film Corporation of America does not make refunds in cash for all unprintable negatives, or if the consumer sends too much money; the respondent issues credit coupons to customers for pictures which cannot be printed, etc. The coupon entitles the customer to credit in a like amount against any future processing order

received within one year. The nature of the credit coupon and the time limit within which the customer may exercise his right of refund is not adequately disclosed on the return mailer or promotional literature.

12. The triple-print process does not give the mail order customer \$7.53 in FREE bonus extras every time respondent Film Corporation of America develops the customer's film. Under its triple-print process the respondent delivers to each customer who returns a roll of film for processing, one print and two duplicate prints of each picture finished by it. The three prints are made simultaneously. The processor's price for the triple-print is respondent's established, regular price for processing the 4" x 4" enlargements, and the additional 2" x 2" duplicate prints.

13. The Famous Brand FREE color film offered is not a nationally well-known brand of color film or color film manufactured by a famous and well known domestic company. The Famous Brand FREE color film, in most instances, is foreign film (Gevacolor [Belgium] and Ilford [British]) made by either Agfa-Gavaert, Inc., Brussels, Belgium or Ilford, Inc., a subsidiary of Ilford, Limited, Essex, England; both of these films are not famous or well-known brands in the United States.

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 aforesaid business and at all times mentioned herein, respondents have been, and are now, in substantial competition, in commerce, with corporations, firms and individuals engaged in the advertising, offering for sale, the sale and finishing of merchandise of the same general kind and nature as that advertised, offered, sold and finished by the respondents.

PAR. 8. The use by the respondents of the aforesaid false, misleading and deceptive statements, representations, acts 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 and services by reason of said erroneous and mistaken belief.

PAR. 9. The acts and practices of the respondents as set forth above 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 Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft complaint which the Washington, D.C. Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents for settlement purposes of all the jurisdictional facts set forth in the aforesaid draft of complaint, 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 alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its rules, now, in further conformity with the procedure prescribed in such rule, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Film Corporation of America is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its executive office located at The Benjamin Fox Pavilion, Foxcroft Square, Jenkintown, Commonwealth of Pennsylvania. Respondent corporation also maintains processing and warehouse facilities in the city of Philadelphia, said addresses being S.W. Corner 20th and Allegheny Avenue, 4901 Stenton Avenue, and the Philadelphia Industrial Park. Film Corporation of America has used and continues to use the following trade names: National Brand Film, Famous Brand Film, Famous Brand, Famous-Brand 36 Pictures Photo Labs, Triple-Print Processing Laboratories, Famous Brand Triple-Print Laboratories, Photomation Film Labs, and Triple-Print Laboratories.

Respondent Ames Advertising Agency, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its office and principal place

of business located at The Benjamin Fox Pavilion, Foxcroft Square, Jenkintown, Commonwealth of Pennsylvania. Ames Advertising Agency, Inc., is a wholly-owned subsidiary of Film Corporation of America.

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 the respondents Film Corporation of America and Ames Advertising Agency, Inc., corporations, and respondents' officers, agents, representatives and employees, directly or through any corporate, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of color film, photofinishing, or any other product or service in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Failing to clearly, affirmatively and expressly disclose, at the outset of the FREE film offer in each instance in which such an offer is made, in any advertisement or in any other form of communication, that forthcoming is an offer to sell photofinishing services and that the FREE color film may be processed by major quality photofinishers.

2. Representing, directly or by implication, that any offer is an introductory offer when such offer is made by respondents on a continuing basis in the regular course of business; or misrepresenting, in any manner, the nature or terms of any introductory offer by respondents.

3. Representing, directly or by implication, that respondent Film Corporation of America is America's largest independent film processing company or employs 1,000 technicians; or misrepresenting, in any manner, the number, skill and technical expertise of respondent Film Corporation of America's employees and the size, nature and extent of its film processing facilities.

4. Representing, directly or by implication, that any merchandise and/or service is guaranteed, (a) unless the terms, conditions and extent to which such guarantee applies and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed, and (b) unless respondent Film Corporation of America, within a reasonable time, not to exceed ten (10) working days from receipt of the request, performs each obligation directly or indirectly represented with said guarantee; misrepresenting, in any manner, the terms, conditions and extent of any guarantee.

5. Representing, directly or by implication, that:

(a) The FREE sample roll of color film can only be processed and/or developed on respondent Film Corporation of America's special equipment; or misrepresenting, in any manner, the processing required or available for respondent Film Corporation of America's film;

(b) Kodak equipment is used exclusively in respondent Film Corporation of America's film processing operations; or misrepresenting, in any manner, the type of equipment used in respondent Film Corporation of America's film processing operations;

(c) Respondent Film Corporation of America's mail order customers receive fast 24-48 hour service on all of their film processing; or misrepresenting, in any manner, the time required to process film processing orders;

(d) Respondent Film Corporation of America has 27 film processing locations from coast-to-coast; or misrepresenting, in any manner, the number of its office or processing locations;

(e) The triple-print process is exclusive and the sample roll of color film and processing combination is special and the result of a tremendous new patented color film and processing breakthrough; or misrepresenting, in any manner, the exclusivity, essential characteristics, constitution or the newness of Film Corporation of America's film and film processing services; and

(f) The 4" x 4" photos are "portrait size" and that 2" x 2" prints are "wallet size;" or misrepresenting, in any manner, the size of finished photos.

6. Representing, directly or by implication, that any article of merchandise or service is being given free or without charge or cost or as a gift, in connection with the purchase of other merchandise or service, unless the stated price of the merchandise and service required to be purchased in order to obtain said article or service is the same or less than the customary and usual price at which such merchandise or service has been sold separately for a substantial period of time in the recent and regular course of respondent Film Corporation of America's business.

7. Representing, directly or by implication, that exact cash refunds will be made for all unprintable negatives or if the consumer sends too much money, unless respondent Film Corporation of America automatically does refund in cash for all unprintable negatives and overpayments.

8. Representing, directly or by implication, that refunds are

made, cash or credit, without clearly and conspicuously disclosing all of the terms and conditions of said refunds.

9. Using the trade names Famous Brand, Famous Brand Film, and other similar names, in any advertisement, package, or in any other form of communication unless, in each instance in which such representation is made, there is clear and conspicuous disclosure that said color film is foreign film when such is the fact; or misrepresenting, in any manner, the origin of manufacture of the film sold or distributed by respondent Film Corporation of America.

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the offering for sale, sale or distribution of any product or in any aspect of preparation, creation, or placing of advertising, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That the respondent corporations shall forthwith distribute a copy of this order to each of their operating divisions.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporations which may affect compliance obligations arising out of the order.

It is further ordered, That respondents maintain for at least a two (2) year period, copies of all advertisements, direct mail and in-store solicitation literature, coupon solicitation requests, and any other such promotional material made for purposes of distributing film and/or inducing the mail order finishing of amateur photographic film.

It is further ordered, That respondents 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 of their compliance with this order.

IN THE MATTER OF

LONGINES-WITTNAUER, INC., ET AL.

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

Docket C-2120. Complaint, Dec. 21, 1971—Decision, Dec. 21, 1971

Consent order requiring a corporation and its subsidiary of New York, N.Y., to cease using promotional games unless all prizes are awarded as repre-