

among other things to cease misrepresenting merchandise as free; misrepresenting the terms, conditions and extent of any guarantee; misrepresenting services offered by respondent, misrepresenting the size or extent of respondent's business; misrepresenting the nature of their business; misrepresenting percentage savings; misrepresenting refunds. Further, respondents are ordered to maintain for a minimum of two years copies of all promotional material made for distribution of film and/or inducing mail order finishing of amateur photographic film.

Appearances

For the Commission: *Jerry W. Boykin* and *Richard C. Donohue*.

For the respondent: *James M. Nicholson, Nicholson & Carter*, Wash., D.C. and *Henry Flattau, Parker, Chapin & Flattau*, New York, N.Y.

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 Berkey Photo, Inc., a corporation, hereinafter sometimes 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 Berkey Photo, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 77 East Thirteenth Street, New York, N.Y.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution to the public of mail order photofinishing; *i.e.*, the developing, printing and processing of color negative and black and white photographic film sold for amateur use. Respondent sells film and processing services under several trade names, including Multi-Print, Just-Rite Film Co., Pictures U.S.A., Camera Club of America, Processing Laboratories, Springfield Photo Service, Champaign Photo Service, Keystone Club, Milford Photo Service, and Mail-A-Way Photo Service.

PAR. 3. In the course and conduct of its business as aforesaid, respondent now causes, and for some time last past has caused, its color negative and black and white photographic film, coupled with a film processing offer, when distributed, to be mailed from its place of business in the State of New York 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 its 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 respondent has made, and is 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 solicitations, requests for film attached to general merchandise, direct mail and in-store solicitations of literature and promotional material. Typical and illustrative of the foregoing, but not all-inclusive thereof, are the following:

FREE Kodak Film with low cost processing.

You need never buy film again.

We guarantee that Multi-Print Film and Processing will give you the satisfaction you have a right to expect. If for any reason you are not completely satisfied with either, your money will be promptly refunded.

IMPORTANT: This film requires special processing and can only be processed full size for 24 picture service by a Multi-Print laboratory.

Two full size prints from each negative.

Multi-Print Processing Laboratories For Multi-Print Or Regular Film Processing

Box 530 Cooper Station

New York, N.Y. 10003

Box 214

Boston, Mass. 02129

Box 1074

Washington, D.C. 20013

Box 4606

Atlanta, Ga. 30302

Box 5135

Chicago, Ill. 60680

Box 1328

Minneapolis, Minn. 55440

Box 22329

Dallas, Texas 75222

Box 222

Denver, Colo. 80202

Box 54764 Terminal Annex

Los Angeles, Calif. 90060

c/o 788 7th & Mission Sts.

San Francisco, Calif. 94101.

Tell your friends They will enjoy this Convenient * * * CAMERA CLUB OF AMERICA SERVICE!

Custom Quality Photographs.

All for ONLY \$4.25 Regular Value \$9.90.

SAVE over 50% on Color Film & Processing.

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, respondent has represented, and is now representing, directly and by implication that:

1. The Kodak film a customer receives when he purchases processing is free.

2. Mail order customers will receive free a new roll of film and will never have to buy film again.

3. Respondent guarantees that mail order customers who are not satisfied with their finished pictures will have their money promptly refunded.

4. The film supplied by the respondent is a special film which may be developed safely only on special equipment in possession of respondent and, in order to warn the customer against ruining the film by having it developed by a film processing company other than respondent, a cautionary warning is necessary.

5. Customers will receive two "full size" prints from each negative when they utilize respondent's film and processing services.

6. Respondent maintains processing plants in ten locations around the United States.

7. Respondent's Camera Club of America is an actual film club and maintains a membership service.

8. Unprocessed film is given special, individual custom processing.

9. Respondent previously offered this processing service for \$9.90, and is now offering it for \$4.25.

10. Customers utilizing respondent's processing services will save over 50 percent of the price previously paid to respondent for these same services.

PAR. 6. In truth and in fact:

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

2. Customers will have to buy film again. The cost of the replacement roll of film is included in the processing fee charges.

3. Mail order customers who are not completely satisfied with respondent'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. Furthermore, the credit coupons issued do not inform the customers that a cash refund is available under any circumstances.

4. The film supplied by respondent is not a special film which may be safely developed only on special equipment in possession of respondent. The film may be developed on regular photofinishing equipment by firms other than respondent and there is nothing inherent in the film that makes a cautionary statement necessary.

5. Customers will not receive two "full size" prints from each negative when they have their Multi-Print film processed by respondent. They will receive prints which are smaller than full size.

6. Respondent does not have ten processing locations located throughout the United States for processing mail order customers' film. In some instances, these locations are only post office boxes from which customers' film is remailed to a processing plant.

7. Respondent's Camera Club of America is not an actual film club; nor does it maintain any membership services.

8. Film is not custom processed and given individual attention. It is processed together with all orders of film, and does not receive special attention.

9. This processing service has never been offered by respondent for \$9.90.

10. Customers will not save over 50 percent of the price previously paid to respondent for these same services.

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 course and conduct of its aforesaid business, and at all times mentioned herein, respondent has been, and is 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 respondent.

PAR. 8. The use by the respondent of the aforesaid unfair, 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 respondent's products and services by reason of said erroneous and mistaken belief.

PAR. 9. The acts and practices of the respondent as set forth above were, and are, all to the prejudice and injury of the public and of respondent's 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 respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of 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 respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 re-

spondent 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 respondent has 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 for a period of thirty (30) days, 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 Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Berkey Photo, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 77 East Thirteenth Street, New York, N.Y.
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 Berkey Photo, Inc., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of film or photo processing services, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, orally or in writing, directly or by implication, that film or any article of merchandise is being given free or without charge or cost or as a gift, in connection with the purchase of film processing services, when the stated price for the processing services required to be purchased in order to obtain said film is more than the customary and usual price charged for processing services without film for a substantial period of time in the recent and regular course of respondent's business; or misrepresenting, in any manner, the terms and conditions of a free offer.
2. Misrepresenting, orally or in writing, directly or by implication, that customers need never buy film again or utilizing words of similar import or meaning.
3. Representing, orally or in writing, directly or by implication, that any merchandise and/or service is guaranteed, (a) unless the

BERKEY PHOTO, INC.
Decision and Order

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, 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; or misrepresenting, in any manner, the terms, conditions and extent of any guarantee.

4. Representing, orally or in writing, directly or by implication, that film sold by respondent requires special processing or must be processed by respondent when said film can adequately be processed by companies other than respondent.

5. Representing, orally or in writing, directly or by implication, through the device of a cautionary statement or warning, that film must be processed by respondent.

6. Representing, orally or in writing, directly or by implication, that respondent will develop full size prints from negatives unless require special processing.

7. Representing, orally or in writing, directly or by implication, that respondent does develop prints in the size generally accepted as full size by the photo processing industry; or misrepresenting, in any manner, the size of prints developed by respondent.

8. Representing, orally or in writing, directly or by implication, that respondent has more film processing locations than it actually operates; or misrepresenting, in any manner, the number of processing locations operated by respondent.

9. Representing, orally or in writing, directly or by implication, that the Camera Club of America is a club; or misrepresenting, in any manner, the organization or nature of respondent's business.

10. Using the representation "all for \$4.25, regular value \$9.90," or "save over 50%," or any other representation with a stated dollar or percentage amount of savings, unless the stated dollar or percentage amount of savings actually represents the difference between the offering price and the actual bona fide price at which such processing services have been sold or offered for sale on a regular basis to the public by respondent for a reasonably substantial period of time in the recent, regular course of its business.

11. Representing, orally or in writing, 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.

It is further ordered, That respondent deliver a copy of this order