

THOMAS L. POGUE, TRADING AS TOM POGUE STUDIOS
CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-2536. Complaint, Sept. 5, 1974—Decision, Sept. 5, 1974

Consent order requiring a Tuscaloosa, Ala., photographer, among other things to cease using bait advertisements; misrepresenting goods as free, promotional sales plans, connections or arrangements with others, and prices.

Appearances

For the Commission: *Ronald C. Cougill.*
For the respondent: *Pro se.*

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 Thomas L. Pogue, an individual trading as Tom Pogue Studios, 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 Thomas L. Pogue is an individual trading and doing business as Tom Pogue Studios, with his principal place of business and office located at 1107-25th Avenue, Tuscaloosa, Ala.

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PAR. 2. Respondent is now, and for some time last past has been, engaged in the photographing, developing and processing of portraits, and in connection therewith, is engaged in the advertising, offering for sale and sale of portraits to the public.

PAR. 3. In the ordinary course and conduct of his business, as aforesaid, respondent has disseminated, and caused the dissemination of certain advertisements by the United States mails in commerce, and has caused his said products, when sold to be shipped from his place of business in the State of Alabama to purchasers thereof located in various other States of the United States, and maintains, and at all times mentioned herein has 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 his business, and for the purpose of inducing the purchase of his products, respondent has made various statements and representations in advertisements in newspapers of general circulation and in direct mail literature, of which the following are typical and illustrative, but not all conclusive thereof:

You are one of over 100 lucky people who will receive a brand new color camera WITHOUT charge along with * * *

One of the world's largest manufacturers has chosen us to test their new color camera.

You will be photographed for your LIFE SIZE COLOR PORTRAIT. Your camera will be given to you without charge. You pay just \$1.95 for the portrait.

This portrait regularly sells for \$50 or more all over the nation. This portrait will be a lifetime treasure.

We will refund your \$1.95 if you are not delighted.

Every family testing this camera will also receive a beautiful LIFE SIZE 16 X 20" NATURAL COLOR SEMIGLOSSY BUST VIGNETTE PORTRAIT * * *

We could not give the camera away without the help of the manufacturer.

The camera is yours to keep just for helping with the test.

PAR. 5. By and through the use of the aforesaid statements and representations, and others of similar import and meaning not specifically set out herein, respondent represents, and has represented, directly or by implication:

1. That respondent is making an offer to specially selected persons or to a significantly small number of persons.
2. That a camera manufacturer or international distributor has chosen respondent to test a new color camera or comparatively test four different snapshot color cameras.
3. That respondent is conducting a bona fide test on a camera as the representative of a large manufacturer or international distributor.
4. That a color camera will be given without charge for helping with the test.

5. That the color camera will be given when the photograph is taken.

6. That, at the time respondent made the representations, the respondent was and is reasonably certain that like grade and quality merchandise was being offered by representative retail outlets all over the nation at higher prices quoted and that substantial sales of the merchandise were being made nationwide at those higher prices.

7. That customers will be allowed a full refund of purchase price upon customer request.

8. That the quoted price of \$1.95 would be the only cost incurred by the customer in receiving the offered portrait.

9. That respondent is making a bona fide offer to sell the advertised 16 X 20" color portrait.

PAR. 6. In truth and fact:

1. Respondent's offer is not being made to specially selected persons, but to the contrary, is being made to a substantial segment of the general public.

2. Respondent has no reasonable basis to claim that he had been chosen to test a new camera or to comparatively test four different snapshot color cameras for a manufacturer or an international distributor.

3. Respondent has no reasonable basis to claim that he was conducting a bona fide testing program or service on a camera or series of cameras as the representative of a manufacturer or an international distributor.

4. The color camera is not given without charge but constitutes a gift only if a portrait is ordered and no refund is requested.

5. The color camera given without charge is not tendered or delivered when the customer responds to have the photograph taken, but to the contrary, is tendered or delivered after the customer has made a second appearance for the purpose of viewing the proofs and placing an order.

6. At no time prior to making the comparative claims in his advertising, did respondent have a reasonable basis to conclude, nor to otherwise be reasonably certain, that like grade and quality merchandise was being offered by representative retail outlets in the nation, at the higher prices quoted, and that substantial sales of the merchandise were being made nationwide at those higher prices.

7. On a substantial number of occasions, customers were not allowed a full refund after requesting such.

8. Respondent's product was incumbered by costs of mailing and handling, which were not clearly and conspicuously stated in the advertisement.

9. Respondent is not making a bona fide offer to sell the 16 x 20" color portrait. Said offer is made for the purpose of obtaining leads as to persons interested in the purchase of other more expensive portraits. After obtaining such leads, respondent's salesmen or representatives disparage the advertised portrait and otherwise discourage the purchase thereof and attempt to sell and frequently do sell higher-priced portraits.

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 of his business, at all times mentioned herein, respondent has been, and now is, in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of photographic portraits of the same general kind and nature as those sold by respondent.

PAR. 8. The use by respondent 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 respondent's product by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of respondent, as herein alleged, 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 Atlanta 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 jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settle-

ment purposes only and does not constitute an admission by respondent 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 sixty (60) days, and 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 Thomas L. Pogue is an individual trading and doing business as Tom Pogue Studios, with his principal place of business and office located at 1107-25th Avenue, Tuscaloosa, Ala.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and the respondent and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Thomas L. Pogue, an individual trading as Tom Pogue Studios, his successors and assigns, 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, and sale of portraits, or any other products, 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 respondent is making an offer to specially selected persons; or misrepresenting, in any manner, the class or numbers of persons to whom such offers are being made.
2. Representing, directly or by implication, that respondent will give any product free or as a gift or without charge, or that any product can be obtained free or as a gift or without charge in connection with the purchase of, or agreement to purchase, any product or service, or in connection with the testing programs of any product or service, unless the product "given" or tendered "without charge" may be retained separate and apart from a request for refund for the product "charged for."
3. Representing, directly or by implication, that respondent is conducting a testing service or program on any product as the

representative of any manufacturer, distributor or other person or entity unless respondent is properly authorized to conduct tests as advertised or represented in writing and in fact is conducting or participating in such advertised testing or product evaluation program and maintains adequate records for a period of three (3) years which disclose the factual basis for any representations or statements as to a testing or product evaluation program of any product, to include copies of all customer correspondence, customer evaluation submissions and respondent's test report submissions to party authorizing such tests.

4. Using, in any manner, any market, performance or other testing scheme, or any advertising, 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 other merchandise or services.

5. Making representations purporting to offer merchandise for sale when the purpose of the representation is not to sell the offered merchandise but to obtain leads or prospects for the sale of other merchandise at higher prices.

6. Discouraging the purchase of or disparaging any merchandise or services which are advertised or offered for sale.

7. Representing, directly or by implication, that any merchandise or services are offered for sale when such offer is not a bona fide offer to sell such merchandise or services.

8. Refusing or failing upon request to tender a refund when the representation has been made directly or by implication that a refund will be initiated upon request, and further failing to honor such refund requests and tender refund within twenty (20) days of notice of refund request.

9. Failing, clearly, emphatically and unqualifiedly to disclose in all advertising, initial sales contact, and all subsequent sales solicitations of purchasers or prospective purchasers the amount of any charge for mailing and/or handling or any other element of cost in connection with the purchase of any portrait or other product or service.

10. Failing, clearly, emphatically and unqualifiedly to disclose in all advertising and initial sales contact the time at which any product, which is offered "without charge" to customers or prospective customers in connection with a sale or prospective sale of any product or service, is to be tendered or delivered by the respondent to customers or prospective customers.

11. Representing, directly or by implication, that competing merchandise of like grade and quality is customarily offered at a retail price of fifty dollars (\$50), or misrepresenting in any manner, the price at which competing merchandise of like grade and quality is customarily offered for sale or sold.

12. Failing to maintain adequate records, for a period of three (3) years from the time of any representation, (a) which disclose the fact upon which any value claim, including comparative value claims discussed in Paragraph 11 of this order are based; and (b) from which the validity of any value claim and similar representations of the type described in Paragraph 11 of this order can be determined.

It is further ordered, That respondent deliver a copy of this order to cease and desist to all present and future personnel employed or engaged by respondent in the advertising and sale of respondent's products and services, and that respondent secure a signed statement acknowledging receipt of a copy of said order and containing an agreement to be bound by the terms of said order from each such person.

It is further ordered, That respondent promptly notify the Commission of the discontinuance of his present business, incorporation or other change in business structure and of his affiliation with a new business or employment or any other change in business organization which may affect compliance obligations arising out of this order. Such notice shall include respondent's current business or employment in which he is engaged as well as a description of his duties and responsibilities.

It is further ordered, That respondent shall, for a period of three (3) years from the date hereof, establish and maintain a record of all business and customer complaints, oral and written, relating to the proscriptions of this order, and which record will be made available for Commission inspection upon reasonable notice.

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

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IN THE MATTER OF

WILLIAM FISHER

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-2537. Complaint, Sept. 5, 1974—Decision, Sept. 5, 1974*

Consent order requiring a former officer of Camera Hut, Ltd., a now-bankrupt, corporate mail order seller of cameras and photographic equipment, located in Moorestown, N.J., among other things to cease misrepresenting the quality, performance or characteristics of photographic lenses or the quality or grade of photographic equipment or supplies; failing to make refunds as advertised; and failing to maintain records of transactions.

Appearances

For the Commission: *Myer S. Tulkoff.*

For the respondent: *Robert Pluese, Camden, N.J.*

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 William Fisher, an individual and as a former officer of Camera Hut, Ltd., Inc., hereinafter 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 William Fisher is an individual and a former officer of Camera Hut, Ltd., Inc., a corporation organized, existing and formerly doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at Moorestown Mall, Route 38 and Lenola Road, Moorestown, N.J. Respondent William Fisher formerly formulated, directed and controlled the acts and practices of Camera Hut, Ltd., Inc., including the acts and practices hereinafter set forth. His address is the same as that of the corporation.

PAR. 2. Respondent for some time last past was engaged in the purchasing, advertising, sale, offering for sale and distribution of photographic equipment and supplies to the public at retail, through direct sales and through mail order.