

Complaint.

FEDERAL TRADE COMMISSION

v.

FEDERAL PRESS, INC., AND C. W. PARKER.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF
AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 622—March 30, 1921.

SYLLABUS.

Where a corporation having offices in many of the more important cities had long engaged in the biennial publication of the well-known reference book *Who's Who* (*Who's Who in America*), the general appearance of which was uniformly the same, and thereafter a competitor, with the intent and effect of misleading the public into confusing it with said corporation, and thereby securing desired data and subscriptions,

- (a) Adopted the same general appearance and price for its publications captioned "*Who's Who in the Northwest*," "*Who's Who and Why*," and (in preparation) "*Who's Who and Why in the United States*"; thereby deceiving many into purchasing its publications for those of said corporation;
- (b) Sent prospective customers circular letters containing such statements as "You will find attached a proof of your biographical matter prepared for insertion in the forthcoming edition of *Who's Who and Why*," and "Attached hereto is a clipping of your biographical matter" (taken from the latest edition of *Who's Who*), requesting any necessary additions or corrections and its return, together with a subscription to the forthcoming edition of *Who's Who and Why*, following the method used by the original *Who's Who* in soliciting such data and subscriptions, and thereby misleading many into complying in the belief that they were subscribing to the original *Who's Who*;
- (c) Used the method above set forth in soliciting subscriptions for *Who's Who and Why in the United States*, continuing, however, to designate the proposed publication as "*Who's Who and Why*"; and
- (d) Sent to prospective customers, following the method of *Who's Who* with persons not former subscribers, blank biographical questionnaires with a request for data for, and subscriptions to its publications, falsely stating that it was located in Washington at a specified address, and had offices in 57 cities named:

Held, That such simulation and practices, under the circumstances set forth, constituted unfair methods of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that the Federal Press (Inc.) and C. W. Parker, hereinafter referred to as respondents, are now,

Complaint.

3 F. T. C.

and for more than a year last past have been, using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent Federal Press (Inc.) is a corporation organized and existing under the laws of the State of Oregon, with principal place of business at Portland, in said State.

PAR. 2. That the respondent, C. W. Parker, is the president of the respondent Federal Press (Inc.) and owns all of its stock except single shares held by each of two business associates, which stock is held by such business associates merely to enable them to qualify as officers and directors. That the respondent, C. W. Parker, is in exclusive charge of the management and affairs of the respondent Federal Press (Inc.).

PAR. 3. That the respondents publish and sell books entitled "Who's Who in the Northwest," "Who's Who and Why," and other books under similar titles, containing personal sketches of living Americans and in some instances illustrated by a picture of the subject of the sketch. Respondents cause said books to be transported to the purchasers thereof from the State of Oregon through and into other States of the United States, the Territories thereof, and the District of Columbia.

PAR. 4. That respondents' books are made of approximately the same size, color, binding, and general appearance of another publication containing personal sketches of living Americans whose position or achievements are considered by the publishers to be of general interest, entitled "Who's Who in America," published by A. N. Marquis & Co., of Chicago, Ill., which books were sold by respondents at the same price as that obtained for the Marquis publication, and, because of the similarity in size, binding, and general appearance of the books so sold by respondents to those sold by A. N. Marquis & Co., a great confusion has resulted, and purchasers have been induced to buy respondents' books upon the mistaken belief that they were the books of A. N. Marquis & Co., which through years of usage and circulation have become well known to the public.

PAR. 5. That respondents, as a means of inducing persons to buy their publications, have made use of circular letters accom-

panied by a sketch of the person addressed clipped from the publication entitled "Who's Who in America," described in paragraph 4 hereof, with the statement that such clipping was a proof of the biographical matter of the person addressed, prepared for insertion in a forthcoming edition of a book to be published by respondents, and the request was made by respondents that such additions or corrections as were deemed necessary be made and the proof returned to respondents. That respondents made use of the further statements in their circular letters and printed matter distributed throughout various States of the United States, soliciting purchases of their books, that they were located at 625 Riggs Building, Washington, D. C., and were operating in 57 different cities in various States of the United States and in Canada. That such statements were false and misleading and were calculated to and did deceive many of the persons addressed into purchasing respondents' books, believing that they were the books of the A. N. Marquis Co.

PAR. 6. That by reason of the facts recited the respondent is using an unfair method of competition in commerce, within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having issued and served its complaint herein, wherein it is alleged that it has reason to believe that the respondents, Federal Press (Inc.) and C. W. Parker, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in respect thereof would be to the interest of the public, and fully stating its charges in that respect, and the respondents having entered their appearances by C. W. Parker, duly authorized to act in the premises, and having filed their answer admitting that certain of the matters and things alleged in said complaint are true in the manner and form therein set forth and denying others therein contained, and thereafter having made and executed an agreed statement of facts, which has been heretofore filed, in which it is stipulated and agreed by the respondents that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case and in lieu of testimony and

Findings.

3 F. T. C.

shall proceed forthwith thereupon and issue its order disposing of this proceeding without the introduction of testimony or the presentation of argument in support of the same, and waiving any and all rights they may have to require the introduction of such testimony, the Federal Trade Commission now makes and enters this its report, stating its findings as to the facts and conclusions.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent Federal Press (Inc.) is a corporation duly incorporated and doing business under and by virtue of the laws of the State of Oregon, with its principal place of business in the city of Portland, in said State. That C. W. Parker is the president of the Federal Press (Inc.), and owns all of its stock except single shares held by two business associates in order to enable them to qualify as officers and directors. That respondent C. W. Parker is exclusively in charge of the management and affairs of the respondent Federal Press (Inc.).

PAR. 2. That the respondents publish and sell books entitled "Who's Who in the Northwest," "Who's Who and Why," "Who's Who and Why in the United States," and other books under similar titles containing personal sketches of living Americans, and in some instances illustrated by a picture of the subject of the sketch. That the respondents cause said books to be transported to the purchasers thereof from the State of Oregon through and into other States of the United States, the Territories thereof, and the District of Columbia.

PAR. 3. That respondent C. W. Parker began the publication of books similar to those described in paragraph 2 above in 1909 with the publication of an edition of "Who's Who In the Northwest." That neither respondent C. W. Parker nor any company in which he was interested published in the United States any other book or books similar to those described in paragraph 2 above until 1917, when respondent C. W. Parker, under the name of Western Press Association, got out another edition of "Who's Who in the Northwest."

PAR. 4. That respondent C. W. Parker in 1917 formed and incorporated the respondent Federal Press (Inc.). That in 1919 respondent C. W. Parker published, under the name of Federal Press (Inc.), a book similar to those described in paragraph 2 above and entitled "Who's Who and Why." That at the time the Commission commenced this investigation, about March 19, 1920, respondents had in process of preparation a book similar to those described in paragraph 2 above which was to be issued under the title, "Who's Who and Why in the United States."

PAR. 5. That A. N. Marquis & Co. of Chicago, Ill., has published biannually since 1899, at Chicago, Ill., a book containing personal sketches of living Americans under the title, "Who's Who in America," and has caused this book to be transported from the said State of Illinois through and into every other State of the United States, the Territories thereof, and the District of Columbia. That through many years of usage and circulation this publication has become well known to the public and is generally known throughout the United States as "Who's Who."

PAR. 6. That all editions of the above-referred-to publication of A. N. Marquis & Co. has been of approximately the same size, color, binding, and general appearance. That respondents' books are made of approximately the same size, color, binding, and general appearance as the publication above referred to of A. N. Marquis & Co. That respondents sold their books at the same price as that obtained for the Marquis publication. That because of this similarity in size, color, binding, general appearance, and price many persons bought respondents' books believing them to be the publication above referred to of A. N. Marquis & Co.

PAR. 7. That A. N. Marquis & Co. for many years has solicited data for and subscription to its publication, "Who's Who in America," by means of circular letters, accompanied by a sketch of the person addressed clipped from the latest previous edition of the publication Who's Who in America, requesting a revision and return of the sketch and a subscription to the forthcoming edition of the publication. That it also solicited data for its publication, particularly from those of whom sketches did not appear in previous editions of the work, by means of a blank biographical questionnaire.

PAR. 8. That respondents, as a means of securing data for and subscription to their books, sent from Portland, Oreg., to many persons throughout various States of the United States, the Territories thereof, and the District of Columbia, circular letters containing the statement, "You will find attached a proof of your biographical matter prepared for insertion in the forthcoming edition of Who's Who and Why," and requesting that such additions or corrections as were deemed necessary be made and the proof returned to respondents, to which letters were attached the biographical matter of the person addressed clipped from the latest previous edition of Who's Who in America, described above. The circular letters also requested the parties addressed to subscribe to Who's Who and Why. That many persons to whom such circular letters were sent revised the biographical matter attached, returned it to respondents, and subscribed

Findings.

3 F. T. C.

to their publication believing it to be the book above described of A. N. Marquis & Co.

PAR. 9. That respondents, as a means of securing data for and subscriptions to their books, sent from Portland, Oreg., to many persons throughout the various States and Territories of the United States and the District of Columbia circular letters to which were attached the biographical matter of the person addressed clipped from the latest previous edition of *Who's Who in America*, above described, and which letters contained the statement, "Attached hereto is a clipping of your biographical matter. Will you kindly make such correction or additions as may be necessary or that you may desire, and return same to us by an early mail for insertion in *Who's Who and Why*." The circular letters also requested a subscription to the forthcoming edition of the publication from the party addressed. That many persons to whom such circular letters were sent revised the biographical matter attached, returned it to respondents, and subscribed to their publication believing it to be the book above described of A. N. Marquis & Co.

PAR. 10. That respondents used the methods described in paragraphs 8 and 9 above in soliciting data for and subscriptions to their publication to be known as "*Who's Who and Why in the United States*," continuing in the circular letters to designate the publication as "*Who's Who and Why*."

PAR. 11. That A. N. Marquis & Co., in connection with the publication and distribution of *Who's Who in America*, for many years has maintained offices or agencies in many of the more prominent cities of the United States, and this is generally known to those familiar with its publication.

PAR. 12. That the biographical questionnaires requesting data for and subscriptions to their publications sent by respondents from Portland, Oreg., to some persons in other States and Territories of the United States and the District of Columbia, contained the statements that respondents were located at 625 Riggs Building, Washington, D. C., and were operating in 57 different cities in various States of the United States and Canada. That in practically none of these cities did respondents ever have any offices or places of business. That those named merely represent cities from which respondents have secured subscribers. That respondents for about a year maintained an office for the receipt and forwarding of mail only, at 625 Riggs Building, Washington, D. C.

PAR. 13. That because of the representations described in paragraph 12 above some persons in various States of the United States

345

Order.

furnished respondents biographical data, believing that respondents were the publishers of the book entitled "Who's Who in America."

PAR. 14. That the similarity in the names for respondents' publications to the name for the publication of A. N. Marquis & Co., when taken in connection with the above-described acts of respondents, is calculated to and has produced confusion in the minds of the public and deceived and misled many of it into subscribing to and purchasing respondents' publications, believing that they were the books of A. N. Marquis & Co.

PAR. 15. That the above-described acts of respondents were intended to and did mislead and deceive many persons into furnishing data for, subscribing to, and purchasing respondents' books, believing that they were the books of A. N. Marquis & Co.

CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts, under the circumstances therein set forth, are unfair methods of competition in commerce, in violation of the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission, having issued and served its complaint herein and the respondents, Federal Press (Inc.) and C. W. Parker, having entered their appearances by C. W. Parker, duly authorized and empowered to act in the premises, and having filed their answer and thereafter having made and executed and filed an agreed statement of facts in which it is stipulated and agreed that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case and in lieu of testimony and proceed forthwith upon the same and enter its order without the introduction of testimony, and waiving therein any and all right to require the introduction of testimony or the presentation of argument in support of the same, and the Federal Trade Commission having made and entered its report, stating its findings as to the facts and conclusions that the respondents have violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

Order.

3 F. T. C.

It is ordered, That the respondents, Federal Press (Inc.) and C. W. Parker, their officers, agents, representatives, servants, and employees cease and desist:

(1) Using upon any publication containing sketches of living Americans the words "Who's Who," unless it is clearly, definitely, distinctly, and unmistakably shown to the public that such publication is not that of A. N. Marquis & Co.

(2) Making their books containing sketches of living Americans of so nearly the same size, color, binding, general appearance, and price as to confuse and mislead the public into believing them the publication of A. N. Marquis & Co.

(3) Using biographical data from A. N. Marquis & Co.'s publications in soliciting data for and subscriptions to their publications unless it be clearly, definitely, distinctly, and unmistakably shown that such biographical matter is from the publications of A. N. Marquis & Co. and that the data requested and subscriptions asked are not for a publication of A. N. Marquis & Co.

(4) Representing themselves as operating in any city or cities of the United States and Canada in which they do not actually maintain offices or places of business.

It is further ordered, That the respondents, Federal Press (Inc.) and C. W. Parker, file a report in writing with the Commission 30 days from notice hereof, stating in detail the manner in which this order has been complied with and conformed to.

RUNYAN CO.

353

Complaint.